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Notice of Appeal.

(Filed August 8, 1930.)

IN CHANCERY OF NEW JERSEY.

(Suit No. 2.)

Between: SOLOMON BERNSTEIN, Complainant, and NEW JERSEY BANKERS SECURITIES Co., a corporation, Defendant.	On Bill, &c. Notice of Appeal.

Take Notice that Harry Ginsberg, a stockholder of the New Jersey Bankers Securities Co., a corporation, hereby appeals from the following orders of the Chancellor, made on the advice of Honorable John H. Backes, Vice Chancellor, and from the whole and every part thereof, to the Court of Errors and Appeals, the last resort in all causes:

1. Order of August 8, 1929;

2. Order of June 24, 1930;

3. Order of July 1, 1930.

Dated, July 22nd, 1930.

WILLIAM C. ASPER,
Solicitor for and of Counsel
with Harry Ginsberg.

I conceive there is good cause for appeal in the above-entitled cause.

WILLIAM C. ASPER,
Of Counsel with Harry Ginsberg.

Petition of Appeal.

(Filed August 8, 1930.)

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between: SOLOMON BERNSTEIN, Complainant-Respondent, and NEW JERSEY BANKERS SECURITIES CO., a corporation, Defendant-Appellant.	On Appeal.

To the Honorable Court of Errors and Appeals, in the Last Resort in All Causes:

The petition of Harry Ginsberg, of the City of Brooklyn, County of Kings and State of New Jersey, owner and holder of seventeen hundred (1700) shares of the stock of the New Jersey Bankers Securities Company, a corporation, the defendant-appellant in the above-entitled cause, respectfully shows:

That your petitioner finds himself aggrieved by certain orders made in the Court of Chancery, by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, upon the advice of Hon. John H. Backes, Vice Chancellor, in a certain cause in the said Court of Chancery wherein said Solomon Bernstein is complainant and the New Jersey Bankers Securities Co. is defendant, as follows:

(a) Order of August 8, 1929, appointing equity receivers for the New Jersey Bankers Securities Co.;

(b) Order of June 24th, 1930, denying the restoration of the assets and property to the New Jersey Bankers Securities Co.;

(c) Order of July 1st, 1930, granting intermediate allowances of $10,000 to each of the receivers, John J. Stamler and Nicholas LaVecchia, and $10,000.00 to their counsel, Leber & Ruback;

for the reasons hereinafter stated:

As to the order of August 8, 1929:

1. That the Court of Chancery was without jurisdiction to make the said order of August 8th, 1929, in that on July 25th, 1929, the Court of Chancery, by Hon. John H. Backes, advised an order to show cause, returnable July 30th, 1929, which amongst other things recited as follows:

"It is on this 25th day of July, 1929, Ordered that the defendant company and its stockholders and creditors show cause before the Chancellor at Chancery Chambers, 1060 Broad Street, Newark, N. J., on Tuesday, July 30th, 1929, at 10 A. M. or as soon thereafter as the matter can be heard, why a receiver should not be appointed in accordance with the prayer contained in the complainant's bill of complaint and according to the statute in such case made and provided.

And the said order to show cause further provided:

"That the defendant's business has been and is conducted at a great loss and greatly prejudicial to the interests of the creditors and stockholders of the defendant company and that said business cannot be conducted with safety to the public and advantage to defendant's stockholders, and the Court being of the opinion that it is absolutely necessary that a receiver be appointed forthwith to protect the defendant's stockholding interests in the Hobart Service Trust Co., now in charge of the banking department of the State, pending the return of the within Order to Show cause."

And the said order to show cause further provided:

"That a copy of the within Order to Show cause (which copy may be certified to be a true copy by complainant's solicitors) be served upon the defendant, by service upon any Vice President of the defendant company or upon its statutory agent within one day hereof."

That no copy of said order to Show Cause was sent or served on me as stockholder of the appellant.

2. That no compliance was made with Rule 111-B of the Court of Chancery, which provides as follows:

"If an 'equity' or 'custodial' receiver be appointed for a corporation, partnership or individual, without notice, there shall be an order

addressed to the stockholders and creditors of the corporation or to the creditors of the partnership or individual as the case may be, to show cause why the receiver and receivership should not be continued or made permanent.''

3. That in violation of law and in deprivation of my vested property right as stockholder of the appellant, the Court of Chancery made said order of August 8th, 1929, without notice, in conformity with Rule 111-B, being sent to me as stockholder of the corporation, to show cause why the receiver and receivership should not be continued and made permanent. That the failure so to do and the eventual appointment of the Equity Receivers, in pursuance of said order to Show cause, constituted a violation of law and a confiscation of my vested property right as stockholder of the appellant.

4. That the making of the order of August 8th, 1929, was in violation of the 14th Amendment of the United States Constitution, in that it confiscated my vested property right as stockholder of the appellant, without due process of law.

5. The Court has no inherent power to wind up a solvent corporation at the suit of a minority stockholder, and the order reserving the right to appoint a Statutory receiver, was therefore unjustified and erroneous.

6. The statutory requirements were not present which justified the Court in making the order of August 8th, 1929, in that:

(a) The corporation was not insolvent.

(b) It had not suspended its ordinary business for want of funds to carry on the same and was not in a condition where it was not about to resume its business within a short time thereafter.

(c) That its business has not been and was not being conducted at a great loss and greatly prejudicial to the interests of the stockholders so that its business cannot be continued with safety to the public and advantage to its stockholders.

7. All of the proceedings had under and by virtue of the said Order to Show cause dated July 25th, 1929, and the making of the Order of August 8th, 1929, and the proceedings had thereunder, as well as all action taken in pursuance thereof, were nugatory and were of no force and legal effect.

8. That the following findings in said order of August 8th, 1929:

"and it appearing to the Court and the Court finding the fact to be that the defendant's business has been and is being conducted at a great loss and greatly prejudicial to the interests of its stockholders, so that its business cannot be conducted with safety to the public and advantage to the stockholders."

were unjustified, unwarranted, illegal and improper and not supported by evidence.

9. That the following findings in said Order of August 8th, 1929:

"that it may be for the best interests of the defendant company that the statutory receiver warranted by the Court's findings of fact should not at this time be appointed, but that Receivers in Equity should at this time be appointed to serve, as such, until the further order of this court, and that the appointment of a statutory receiver should be deferred and reserved until future application therefor."

were unjustified, unwarranted, illegal and improper and not supported by evidence.

10. That all of the proceedings had under and by virtue of the Order to show Cause dated July 25, 1929, and in pursuance thereof, were illegal, improper and in violation of law, in that no notice was given to petitioner as stockholder, as provided by law.

11. That the injunctive mandate and restraint imposed under said order of August 8th, 1929, were unwarranted, and unjustified in equity and law.

12. That all of the injunctive mandates and restraints imposed under said order of August 8th, 1929, were not justified under the evidence submitted and the proofs taken by the Court.

13. That the Court erred in regarding shrinkage in the market value of some of the company's securities as a basis for the making of the order of August 8th, 1929, and in making the Order to Show Cause upon which the same was based.

14. That the Court erred in making the order

of August 8th, 1929, and the Order to Show Cause upon which the same was predicated, in that it considered evidence concerning the acts of the directors in office, before the filing of the said bill of complaint by Solomon Bernstein, which acts were not properly the subject of investigation in the present proceedings, because they had already been passed upon, adjudicated and disposed of in the dismissal of the bill of complaint in the prior suit brought by Fannie Mayer, complainant, and New Jersey Bankers Securities Co., defendant.

15. That the bill of complaint, as amended, sets forth the following:

"Complainant further says that the defendant company is now without a board of directors containing the minimum number of persons contemplated by and provided for in the by-laws of said company that it has only two directors who are at present within the United States of America; that the President of the company is in Europe; that the company is now without a treasurer and that the only officer now functioning is the Secretary, Miss Catherine E. Matey."

which, on its face, made notice to stockholders as a matter of fact indispensable under the exigencies of the case as stated in the said complaint, and the failure to provide for notice to petitioner as a stockholder, and the giving thereof, constituted an abuse of discretion.

16. That the closing of the Hobart Trust Company, an independent company in which the

New Jersey Bankers Securities Company owned a majority of the stock, but which Trust Company had its own Board of Directors, did not justify the Court in making the order of August 8th, 1929, and the Order to Show Cause of July 25th, 1929, upon which the same was predicated.

17. That if, in fact, cause existed for the appointment of receivers, under the Order to Show Cause of July 25th, 1929, the same was eliminated on or before the date of the making of the order of August 8th, 1929, and no cause continued to exist which would legally justify the making of said order and the appointment of receivers thereunder.

18. That the Court erred in adding to the foot of its order of August 8th, 1929, the following:

"And it is further ordered that it is reserved to add to the foot of this decree that the defendant corporation and its officers and agents be restrained and enjoined from exercising any of its privileges or franchises and to appoint a receiver or receivers with powers granted by the 'Act concerning corporation' 1896 and the several supplements and amendments thereto."

in that the evidence and the proofs taken and the bill of complaint did not warrant any such reservation, and such reservation was unjustified, improper and erroneous.

19. That the appointment of receivers, without affording the petitioner, as a stockholder, an opportunity to be heard, was a taking of

his property without due process of law and that Section 65 of the General Corporation Act, Chapter 185, Laws of 1896, page 67, in permitting same to be done, if in fact said act permits such procedure, is in violation of the Federal Constitution.

20. That the appointment of receivers, without affording the petitioner as a stockholder an opportunity to be heard, was a taking of his property without due process of law and that Section 65 of the General Corporation Act, Chapter 185, Laws of 1896, page 67, in permitting same to be done, if in fact said Act permits such procedure, is in violation of the Constitution of the State of New Jersey.

21. Section 65 of the General Corporation Act, is in violation of the Constitution of the United States, in that it permits or attempts to permit the winding up of a solvent corporation at the suit of a minority stockholder or creditor.

22. Section 65 of the General Corporation Act, is in violation of the Constitution of the State of New Jersey, in that it permits or attempts to permit the winding up of a solvent corporation at the suit of a minority stockholder or creditor.

23. Said order of August 8th, 1929, was erroneous in that it should have provided that immediately upon the election of a Board of Directors of the New Jersey Bankers Securities Company, the receivership be terminated and the company restored to the directors.

24. The said order of August 8th, 1929, was further erroneous in that it should have provided that immediately upon the elimination of the emergencies alleged in the bill, set forth as the grounds for appointing equity receivers, the equity receivers should be discharged and the assets of the company restored to its Board of Directors.

25. And your petitioner humbly appeals from so much of said order of August 8th, 1929, as directs and adjudges as aforesaid, upon the ground that the same is erroneous, because the proofs before the said Court did not warrant the said Court in granting the relief to the complainant which by said order was granted to him, and because upon the facts and the law it appeared that the Court was wholly without power and jurisdiction to grant the ultimate relief in aid of which the injunctive relief was granted by said Court to the Complainant, and also, because it appeared that the rights of the stockholders and creditors were impaired, without due process of law, no notice of the proceedings having been given to petitioner as a stockholder, or the other stockholders and creditors of the New Jersey Bankers Securities Co., in conformity with law in force and effect in the State of New Jersey at the time of the making thereof.

As to Order of June 24, 1930:

1. That duly verified petition of the New Jersey Bankers Securities Co., dated January 23, 1930, and filed January 27, 1930, and supplemental petition duly verified, filed April 23rd,

1930, were presented to the Court of Chancery, alleging, amongst other things, the following:

(a) That receivers had been appointed and were in possession of all the assets of the corporation, under an order dated August 8th, 1929, made by the Court of Chancery.

(b) That the said corporation was solvent at the time of the appointment of said receivers, and continued to be and is, at the present time, solvent.

(c) That the said corporation possessed sufficient cash to pay and satisfy all of its existing debts of every nature and character.

(d) That the corporation, through its Board of Directors and the stockholders, had by appropriate action authorized the application for the restoration of the assets of the company and the discharge of the receivers.

(e) That the Court of Chancery directed the receivers to mail the following letter to each of the stockholders of the company:

"NEW JERSEY BANKERS SECURITIES CO.

Counsel to Receivers:	John J. Stamler and Nicholas LaVecchia Receivers
Leber & Ruback 60 Park Place Newark, N. J.	60 Park Place, Newark, N. J.

To the Stockholders of the New Jersey Bankers Securities Co.:

The Chancellor of the State of New Jersey wants to hear from you whether you want your share of the company assets paid to you or whether he should hand the property back to a board of directors to carry on the Company's business. He also wants to know whether the board of directors recently elected are satisfactory to you or whether you want to vote for a new board. You must send him your answer at once.

The Company has about one million seven hundred thousand dollars ($1,700,000) to be divided among shareholders. It ought to net to each share between three and four dollars. (The Company also has assets of uncertain value of about two million dollars.) It is proposed to pay at the present time one dollar and a half a share and the balance in a short time if the company is to be wound up. The new board of directors want the Company to go on with its business. They think they can invest the capital and make the stock worth more per share than will be paid to you if the money is divided among the stockholders. It is for you to say what you want done.

This letter is written by direction of Vice Chancellor Backes who has the trust in charge for the Court of Chancery. GIVE YOUR ANSWER ON THE ENCLOSED POSTAL CARD BY RETURN MAIL.

Annexed hereto is a list of the directors elected recently at a meeting of about fifteen hundred stockholders out of about ten thousand.

We understand all stockholders had notice of the meeting. Also annexed is a statement of the standing of the Company prepared by us.

Yours very truly,

JOHN J. STAMLER and NICHOLAS LA VECCHIA,
Receivers."

(f) That thereafter the Court of Chancery directed the holding of a stockholders meeting, under the supervision of a Master, at which said meeting the stockholders again, by an overwhelming majority of those present and voting, favored the continuation of the Company by a Board of Directors elected at said meeting and re-elected all of the directors who had theretofore been previously elected by the stockholders of said company.

2. That the Court of Chancery had no power, authority or right to make said order of June 24, 1930, denying the relief prayed for in said petition and supplemental petition in the face of the conditions and uncontradicted facts existent as therein set forth.

3. That amongst other things, said petition and supplemental petition clearly established the fact that all exigencies which might have existed justifying the appointment of receivers, had long terminated, and that there was no legal necessity for the continuation of the same, as clearly appeared from the facts presented to the Court of Chancery in the petition and supplemental petition hereinbefore referred to.

4. That all of the proceedings had under and by virtue of the said petition and supplemental

petition of the New Jersey Bankers Securities Co., and in pursuance thereof, clearly presented a state of facts and such as necessitated the restoration of the property and assets of the company to it, and the discharge of the receivers.

5. That the making of the order of June 24, 1930, refusing to restore the assets of the company to it, and to discharge the receivers in view of all of the facts existing at the time, constituted a violation of the 14th Amendment of the Constitution of the United States, in that it confiscated a vested property right of the stockholders of the company without due process of law.

6. That there was no legal justification, in the face of the petition and supplemental petition, and the proceedings had thereunder, for the making of an order such as was made by the Court on June 24th, 1930.

As to the order of July 1st, 1930:

1. That the Court of Chancery was without jurisdiction to make said order of July 1, 1930, and no legal basis existed therefore, in that:

(a) The Court, having appointed the receivers, John J. Stamler and Nicholas LaVecchia, without giving notice to stockholders, was without power or jurisdiction to make any allowances to the said receivers and their counsel, on account of their alleged services.

(b) The Court of Chancery announced, and in pursuance thereof, on June 24, 1930, commenced a hearing to determine what fees should

be allowed to the receivers and their counsel for services rendered, and John J. Stamler, one of the receivers was sworn as a witness, and before the cross-examination was completed, on the adjourned date, the Court arbitrarily terminated the said examination, denying to counsel the right to cross-examine the witnesses, and made an allowance to the said John J. Stamler as receiver in the sum of $10,000.00.

(c) That the Court of Chancery announced, and in pursuance thereof, on June 24, 1930, referred to David Litwin, Esq., a master, to hear testimony of Nicholas LaVecchia, one of the receivers, for the purpose of determining what allowance should be made to him as receiver. That arbitrarily and without notice to counsel and to the stockholders, the said Hon. John H. Backes, Vice Chancellor, terminated said proceedings, and fixed an allowance to the said Nicholas LaVecchia as receiver of $10,000.00, without having given an opportunity to the defendant company to cross-examine and investigate as to the reasonableness of the allowance prayed for, and what sum, if any, should be paid for the services rendered.

(d) That the Court of Chancery announced, and in pursuance thereof, on June 24, 1930, referred to David Litwin, Esq., a Master, to hear testimony of Meyer E. Ruback, Esq., of the firm of Leber & Ruback, solicitors of the said receivers, for the purpose of determining what allowance should be made to said solicitors of receivers. That arbitrarily and without notice to counsel and to the stockholders, the said Hon.

John H. Backes, Vice Chancellor, terminated said proceedings, and fixed an allowance to the said Leber & Ruback, solicitors of the receivers of $10,000.00, without having given an opportunity to the New Jersey Bankers Securities Co. to cross-examine and investigate as to the reasonableness of the allowance prayed for, and what sum, if any, should be paid for the services rendered.

(e) That the Court of Chancery was without jurisdiction to adjudicate the amount of the allowances, in view of the fact that there was not before the Court of Chancery the evidence which the said New Jersey Bankers Securities Co. sought to have presented to the Court of Chancery for its consideration to determine the amount of the allowances.

(f) That the said receivers failed to file in the Court of Chancery an itemized statement showing the nature and character of the services rendered, and in particular, failed to file an itemized statement of services which would justify the allowance made by the Court of Chancery to the said John J. Stamler, as receiver.

(g) That the said receivers failed to file in the Court of Chancery an itemized statement showing the nature and character of the services rendered, and in particular, failed to file an itemized statement of services which would justify the allowance made by the Court of Chancery to the said Nicholas LaVecchia, as receiver.

(h) That the said Leber & Ruback, solicitors

of the receivers, failed to file in the Court of Chancery an itemized statement showing the nature and character of the services rendered by them, and in particular, failed to file an itemized statement of services rendered which would justify the allowance made by the Court of Chancery to the said Leber & Ruback, as solicitors of the receivers.

(i) That the Court of Chancery was without jurisdiction to make the said allowance in view of the fact that an appeal was then pending, notice of appeal having been filed on April 23, 1930, removing the matter to this Honorable Court, by complying with the rules regulating appeals from the Court of Chancery to this Honorable Court.

(j) That the Court of Chancery was without jurisdiction to award any intermediate allowances, as no reason existed therefore at the time of the making of the allowances, and no justifiable or legal cause existed for the making of the said order.

(k) That the Court of Chancery erroneously made an order for intermediate allowances, in view of the fact that the appeal having been taken from the Court of Chancery to this Honorable Court, which amongst other questions, involved the question as to the legality of the appointment of the said receivers by the Court of Chancery, and which involved the question as to the jurisdiction of the Court of Chancery in making the said appointment.

2. That an allowance of $10,000.00 to each

of the said receivers, John J. Stamler and Nicholas LaVecchia, and the allowance of $10,000 to Messrs. Leber & Ruback, solicitors of the receivers in the above matter, on account of their alleged services, is highly excessive, unreasonable and unjustified.

Petitioner therefore prays that each of the foregoing orders of the Chancellor and all of the proceedings had in connection therewith and relating thereto may be reversed, set aside and for nothing holden, and that your petitioner may have such other relief in the premises as may seem proper.

WILLIAM C. ASPER,
Solicitor and of Counsel with
Harry Ginsberg, Petitioner.

NOTE—The balance of this state of the case is the same as that filed by the New Jersey Bankers Securities Co. in its companion appeals, and is therefore not printed here again, but this appellant hereby makes the said entire state of the case of the New Jersey Bankers Securities Co. a part of this state of the case.

New Jersey Court of Errors and Appeals

Between SOLOMON BERNSTEIN, Complainant-Respondent, and NEW JERSEY BANKERS SECURITIES CO., a corporation, Defendant-Appellant.	On Bill &c. On Appeals from Chancery.

BRIEF OF DEFENDANT-APPELLANT.

Scope of the Brief.

This brief comprehends in its scope the discussion of three appeals taken by defendant-appellant from the following adjudications of the Court of Chancery:

(1) Decree of August 8, 1929, appointing receivers for defendant corporation;

(2) Order of June 24th, 1930, denying defendant's petition for restoration of its property and termination of the receivership;

(3) Order of July 1st, 1930, allowing fees of $30,000 to the receivers and their counsel on account.

New Jersey State Library

Statement of the Case.

A. Allegations of the Bill of Complaint.

The bill of complaint was filed on July 25, 1929, by Solomon Bernstein, a stockholder of the defendant company owning 61¾ shares of no par value common stock (State of Case, p. 18).

The bill alleges that the defendant corporation was organized under the laws of the State of New Jersey, on August 19, 1927, with an authorized capital stock of 2,000,000 shares of no par value; that it was authorized to engage in the business of buying, holding, selling and dealing in shares of stock of other corporations and securities generally; that there were issued and outstanding about 642,639 shares distributed among approximately 15,000 shareholders; that immediately upon its incorporation, Harry H. Weinberger was elected president of the company; that under his management, with the approval of the then board of directors, the company purchased controlling blocks of stock in divers banking institutions, paying large and unwarranted prices for the shares purchased; and that the purchase price for said shares was paid out of moneys realized from the public offering of the defendant's own stock which brought to its treasury a sum in excess of $7,000,000.

The bill then purports to relate the history of the defendant company from the date of its organization to the date of the filing of the bill (S. of C., pp. 19-21), and among other things, refers to a suit instituted by Fannie Mayer against the instant defendant, for the appointment of a receiver in June, 1928. We shall have occasion later to make reference to that litigation and certain legal aspects thereof presented on this appeal.

The complainant then enumerates the assets and liabilities of the defendant company (S. of C., pp. 22-24), which are summarized as follows:

Assets	$5,558,584.14
Liabilities (of which $300,000 are stated to be doubtful) ...	701,835.67

In paragraphs 6 to 12, inclusive, complainant alleges that the assets of the defendant company suffered a shrinkage in value of $1,500,000 prior to February, 1929 and a further shrinkage of $1,000,000 since February, 1929; that the securities held by it earned no dividends; that the defendant company itself paid no dividends on its outstanding capital stock, except one dividend paid shortly after its incorporation, but not out of profits earned; that certain collateral security held by it had depreciated in value; and that the Hobart Service Trust Co. of Passaic, a banking institution in which defendant held a controlling interest, had been closed on July 24, 1929 by the Banking Commissioner of the State of New Jersey (S. of C., pp. 24-31).

The bill further charges that the directors of the defendant company were guilty of various breaches of trust in their administration of its affairs (S. of C., pp. 31-32).

The last paragraph before the prayer for relief alleges that the business of the defendant company has been for a long space of time conducted at a great loss and greatly prejudicial to the interests of its creditors and stockholders and is now being conducted at a great loss and greatly prejudicial to the interests of its stockholders and creditors; that its business cannot be conducted with safety to the public and advantage to its stockholders; and that

the interests of the defendant's creditors and stockholders require an injunction against the exercise of its privileges and franchises and the appointment of a receiver for the company. The paragraph is framed to bring the case within the language of the 1912 amendment to Section 65 of the Corporation Act (S. of C., pp. 32-33).

Upon the filing of the bill of complaint on July 25, 1929, John J. Stamler and Nicholas La Vecchia were appointed receivers of the defendant company without notice to the corporation, its directors or stockholders. The order appointing them recited that "it is absolutely necessary that a Receiver be forthwith appointed to protect the defendant's stockholding interests in the Hobart Service Trust Co. now in charge of the Banking Department of the State" (S. of C., pp. 15, 17a).

Complainant evidently realizing the infirmities existing in his bill of complaint, amended the same on August 1, 1929 to add the allegation that the defendant company lacked a governing board of directors (S. of C., p. 47). But this condition, if true, did not exist on July 25, 1929, at 9 A. M. when the order appointing receivers was filed (S. of C., p. 17c), since the resignation of Dr. Stark is only dated July 25, 1929 (S. of C., p. 446).

B. History of the Company.

The history of the defendant company divides itself into three periods:

(1) The period from the inception of the company to the settlement of the suit instituted by Fannie Mayer against New Jersey Bankers Securities Co., et als., in September, 1928.

(2) The period from September, 1928, to the institution of the first suit between Solomon

Bernstein and New Jersey Bankers Securities Co. in April, 1929.

(3) The period from April, 1929, to the institution of the instant suit between Solomon Bernstein and New Jersey Bankers Securities Co.

(1)

The history of the defendant from its organization in August, 1927, to the settlement of the Mayer suit in September, 1928.

The defendant company was incorporated under the laws of the State of New Jersey, on August 19, 1927, with an authorized capital stock of 300,000 shares of no par value, later increased to 2,000,000 shares of no par value. There are presently issued and outstanding about 648,000 shares owned by approximately 15,000 stockholders (S. of C., p. 199).

The authorized purposes of the company included the purchase of stocks and securities in other corporations for investment and re-sale (Exhibit C-2, S. of C., pp. 325-368). It was what is generally termed a holding company.

Immediately after its incorporation, the company acquired from Harry H. Weinberger 2,000 shares of Hobart Trust Co. stock, 2,100 shares of Service Trust Co. stock, and 1,150 shares of Equitable Mortgage & Title Guaranty Co. stock, for which it paid, not by cash, but by issuing 250,000 shares of its capital stock having no par value, to said Harry H. Weinberger (S. of C., p. 262). Thereafter, the Hobart Trust Co. and the Service Trust Co. were amalgamated as Hobart Service Trust Co. and after the amalgamation, the stockholdings of the defendant totaled 30,120 shares. The value of these shares was carried on the books of the company at $2,478,079.19 (S. of C., p. 374).

The capital stock of the New Jersey Bankers Securities Co. was publicly offered for sale at $12.50 per share (S. of C., p. 262).

In January, 1928, the Legislature of the State of New Jersey ordered an investigation of the Banking Department of the State of New Jersey, and appointed a commission known as the Davis Commission (Laws of N. J., 1928, Joint Resolutions Nos. 1 and 16). The Davis Commission publicly investigated the affairs of the New Jersey Bankers Securities Co. At or about the time when the investigation took place, a stockholder, owning 50 shares of stock in the New Jersey Bankers Securities Co., one Fannie Mayer, filed a bill of complaint, on June 20, 1928, charging that the officers of the defendant had been negligent in their duties, and had wasted the assets of the company. The complainant also alleged that the defendant company had been and was conducting its business at a great loss and greatly prejudicial to the interests of its creditors and stockholders, and prayed that the court appoint a statutory receiver and issue an injunction in accordance with Section 65 of the Corporation Act, and the amendments thereto.

The defendant company contested the suit, and efforts were made to settle the litigation. The efforts were successful and a settlement was effected in the following manner: Harry H. Weinberger, president of the defendant company, and several other directors voluntarily resigned the offices held by them (S. of C., pp. 264-265). The loss to the defendant company alleged to have been caused by the misfeasance of its directors was adjusted by agreement dated August 22, 1928, whereby the said Harry H. Weinberger agreed to purchase from the defendant company 172,034 shares of its capital stock for $2,500,000; $200,000 to be paid in cash,

and the balance by his promissory note for $2,300,000 secured by collateral and by the deposit of the 172,034 shares with the company (Ex. C-10, S. of C., pp. 442-445).

The Court of Chancery and the stockholders approved the settlement, and a final order was entered on the 25th day of September, 1928, dismissing the bill of complaint.

The said order contained the following provisions:

> "It is on this 25th day of September, 1928, on motion of Stein, McGlynn & Hannoch, solicitors for complainants, ordered:
>
> 1. That the offer of settlement of the within litigation, as more particularly set forth in the aforesaid petition, be and the same is hereby approved by this Court.
>
> 2. That the said defendant corporation be and it is hereby authorized and empowered and directed to consummate said settlement upon the terms and conditions in said offer set forth, and to that end execute, acknowledge and deliver any and all instruments necessary or advisable.
>
> 3. That all restraints heretofore imposed by any order heretofore executed herein be and the same are hereby vacated.
>
> 4. That the said corporation do pay to the following named solicitors as and for their services, the following sums of money, that is to say:
>
> To Stein, McGlynn & Hannoch $50,000
> To Collins and Corbin 20,000
> To McCarter & English 10,000
> To Morris E. Gordon, Avidan & Avidan, Cohn & Cohn, and William S. Cantalupo 150

5. That upon the consummation of said offer of said Harry H. Weinberger contained in said petition, that the bill of complaint be dismissed, without costs to either party."

From July 17, 1928, the date on which Harry H. Weinberger resigned as president and director, until September, 1928, John J. Stamler headed the company as director and president, his election having been approved by the parties to the litigation and the Court (S. of C., p. 265).

(2)

History of the defendant company from September, 1928 to April, 1929,—Bernstein Suit No. 1.

In September, 1928, when the aforesaid order was made, a new board of directors was elected with the approval of the Court of Chancery (S. of C., p. 318).

Senator Edward I. Edwards became the president and Abraham Jelin the Vice-President and General Manager. The new administration immediately took charge of the affairs of the defendant company and set about to place the company in a more liquid position. It was generally believed that an amalgamation would be advisable, if the same could be arranged with some company (see affidavits, Exhibit C-12, S. of C., p. 447, seq.).

On March 20, 1929, the New Jersey Bankers Securities Co. and the Equitable Financial Corporation of New York entered into an agreement of merger approved by seven directors of the defendant company and disapproved by three. A stockholders' meeting was called to vote upon the pro-

posed merger and the objecting directors were permitted to send a letter to each of the stockholders, at the expense of the company, stating their grounds of objection. Prior to the stockholders' meeting and on April 1, 1929, the same Solomon Bernstein who is the complainant in the present action and who had acquired 61¾ shares of stock in the defendant company four months before, filed a bill of complaint in the Court of Chancery, through his present solicitors, praying an injunction of the proposed merger on the ground that it was inequitable and unfair to the interests of the stockholders' of the New Jersey Bankers Securities Co. The stockholders' meeting was held, and about 440,000 shares were voted in favor of the merger, and 21,000 opposed, out of a total of 644,000 shares eligible to vote. A preliminary restraint and injunction was granted by the Court of Chancery; and as a result of the litigation the New York company withdrew its offer and the entire matter became academic. The bill of complaint was dismissed.

Between September, 1928, and April 1, 1929, the directors were engaged primarily in settling and disposing of all unfinished and outstanding obligations incurred by the previous board, cancelling outstanding installment subscriptions to stock of the corporation, and conserving the assets inherited from the previous administration. During that period, the company made a net operating profit of $13,984.83 and in addition thereto a profit of $119,661 as a result of cancelling stock subscriptions (S. of C., p. 204).

(3)

History of the defendant company from April, 1929 to July 25, 1929.

The failure of the merger created considerable dissension among the directors of the company with the result that on April 19, 1929, Abraham Jelin resigned his office as vice president and general manager for which he had received a salary of $12,000 a year (S. of C., pp. 265, 285, 217).

Thereafter in pursuance of its policy of cutting expenses, the company moved to Jersey City and decreased the size of its offices. The accountant's report shows a material reduction in the operating expenses of the company during this period (S. of C., pp. 216, 217).

On July 24, 1929, without notice to the New Jersey Bankers Securities Co., and without notice to the directors of the Hobart Service Trust Co., the Commissioner of Banking and Insurance of the State of New Jersey closed the doors of the Hobart Service Trust Co. The instant defendant held a controlling interest in said Hobart Service Trust Co., but the latter was in all respects an independent institution with a separate board of directors. Less than 24 hours after the closing of the bank, Solomon Bernstein filed the bill of complaint in this suit.

In this connection may we respectfully call attention to the fact that Bernstein, who is the complainant in this suit, stands alone with 61¾ shares, and that not one of the 15,000 stockholders owning over 648,000 shares has joined with him or asked for permission to intervene in this cause. But on the contrary on every occasion the stockholders,

when they had an opportunity to do so, expressed themselves in favor of continuing the corporation's existence.

C. History of this litigation from July 25, 1929 to date.

On July 25, 1929, complainant filed the present bill. On the same day, without notice to the corporation, its directors or stockholders, the Court of Chancery made an order appointing John J. Stamler and Nicholas La Vecchia custodial receivers of the defendant company.

The said order provided among other things as follows:

> "It is on this 25th day of July, 1929, Ordered that the defendant company and its stockholders and creditors show cause before the Chancellor at Chancery Chambers, 1060 Broad Street, Newark, N. J., on Tuesday, July 30, 1929, at 10 A. M., or as soon thereafter as the matter can be heard, why a Receiver should not be appointed in accordance with the prayer contained in complainant's bill of complaint and according to the Statute in such case made and provided" (S. of C., p. 16).

The said order however contained no provision for giving the stockholders and creditors notice, and in fact, no notice was given. As a consequence the stockholders had no opportunity to show cause.

On August 1st and 2nd, 1929, a summary hearing was held, On August 8, 1929, the learned Vice-Chancellor announced his opinion (S. of C., pp. 61-63), and signed the order from which the first appeal is taken.

Thereafter the receivers appointed by said order sold the 30,210 shares of the capital stock of Hobart Service Trust Co., owned by defendant for $14.00 a share, receiving a total of $421,960.00. Immediately after the sale the Hobart Service Trust Co. was reopened and resumed its business (S. of C., p. 526).

The receivers also sold 2,564 shares of the Lebanon National Bank stock owned by the defendant company for the sum of $250,000. Other securities owned by the defendant company were likewise sold, including 1,150 shares of Perth Amboy National Bank stock at $175.00 per share (S. of C., p. 526).

On December 4, 1929, the Court allowed an order to show cause, upon application of the receivers, returnable December 17, 1929, which required the stockholders to show cause why a partial liquidating dividend of $1.50 should not be declared and intermediate allowances fixed for the receivers and their counsel (S. of C., pp. 604-606). Annexed to the order to show cause was a notice that on the return date the receivers and their counsel would apply for $25,000 each as intermediate allowances, a total of $75,000 (S. of C., p. 606).

A stockholders' protective committee was organized to protect the interests of the stockholders. On the return day, counsel for the committee appeared before the Court of Chancery and objected to the payment of any liquidating dividend and to the payment of $75,000 to the receivers and their counsel. Counsel for the committee stated to the court that the stockholders had not had opportunity to hold a stockholders' meeting or to elect

directors. Thereupon, the Court adjourned the hearing on the order to show cause until February 4, 1930 (S. of C., p. 527).

Through the efforts of the stockholders' committee and at its expense, a stockholders' meeting was held on January 14, 1930, at Jersey City and duly adjourned to January 16, 1930, at Newark. At said meeting the stockholders adopted a resolution almost unanimously (only three stockholders owning 265 shares, voting in opposition), to the effect that the stockholders were in favor of continuing the company and were opposed to the payment of a liquidating dividend and to the payment of $75,000 to the receivers and their counsel. At the meeting, the stockholders elected a board of directors consisting of nine men. Practically every director elected was a substantial stockholder (S. of C., pp. 527-530).

The Board of Directors convened and elected officers. Its counsel was directed to petition the Court for the restoration of the assets of the company to it, and for the discharge of the receivers (S. of C., p. 530).

Counsel for the board submitted a duly verified petition to the Court of Chancery on the 27th day of January, 1930, reciting the activities of the stockholders and the election of directors and officers, and praying that the assets of the company be forthwith restored to it and the receivers discharged (S. of C., pp. 523-534). The petition set forth that the company was solvent, and in a liquid condition, and further stated:

> "17. That the present financial condition of this company is such that there is no need or necessity for the continuation of the receivership. That if this company were permitted

to continue to function and its property be restored to it, the present financial condition would add a considerable value to its excellent liquid position. That the general policy throughout the United States at this time is to conserve assets and do everything possible to co-operate with institutions in their endeavor to rehabilitate themselves, so as to benefit the interests of their stockholders.

18. That the petitioner further respectfully represents unto your Honor that the said company enjoys as one of its main assets, a charter which has inestimable value particularly in view of the broad powers enjoyed by it under and by virtue of its certificate of incorporation. That the stockholders have manifested a desire and an eagerness to continue said company because of the unusual privileges enjoyed by it by virtue of said charter.

19. That your petitioner respectfully further represents unto your Honor, and assuming but not admitting that this Honorable Court was justified on July 25th, 1929, and on August 8th, 1929, to make the orders and the provisions therein contained, by reason of the imperative requirements alleged in said bill of complaint, and in particular the closing of the Hobart Service Trust Co., and a non-functioning Board of Directors; it is respectfully urged and submitted that these conditions no longer in fact exist; that the said Hobart Service Trust Co. control has been sold and the cash consideration therefor actually paid to the company. That a lawfully constituted board of directors has been duly elected by an overwhelming majority of those voting at an election held for that purpose as aforesaid. That

> the petitioner by its board of directors is ready to take possession of the property of the defendant company, and proceed with the discharge of its duties. That there no longer exists any necessity for the continuation of the said receivership to preserve the property of the said corporation, to protect the rights and interests of its stockholders. That the stockholders have manifested a desire and an eagerness to terminate said receivership in their opposition to the payment of a liquidating dividend and in their affirmative action as appears by resolution adopted as hereinbefore set forth" (S. of C., pp. 532-533).

Upon the filing of the petition, an order to show cause dated January 27, 1930 was allowed, returnable February 4, 1930, the adjourned date of the order to show cause of December 4, 1929, above referred to (S. of C., pp. 535-536).

On February 18, 1930, the date to which the matter was further continued, the Court directed counsel for the receivers to prepare a new order to show cause returnable March 26, 1930, requiring the creditors and stockholders to show cause why the defendant company's petition should not be granted and the receivership terminated. A new order to show cause was accordingly prepared and served, stating the names of the newly elected directors and officers of the company, stating that the receivers had on hand approximately $1,700,000 in cash and stating further:

> "And the Court desiring to afford to the creditors and stockholders of this company an opportunity to be heard on the said petition to turn over said cash and assets to the afore-

named directors and officers or to any other Board of Directors that may hereafter be elected by the stockholders;

It is, on this tenth day of March, 1930, ORDERED, that the creditors and stockholders of said company show cause before the Chancellor (Vice-Chancellor John H. Backes, sitting for the Chancellor), at Chancery Chambers, 1060 Broad Street, Newark, N. J., on Wednesday, March 26th, 1930, at ten o'clock in the morning, or as soon thereafter as the matter can be heard, why said receivership should not be terminated, final allowances made to the receivers and their counsel and to complainant's solicitors, and why the said Receivers should not turn over to the said directors and officers or to any other directors and officers as may hereafter be elected, all the cash, securities and assets now in the custody of this Court being administered by said Receivers" (S. of C., pp. 539-540).

Before the return date of said order to show cause, the Court instructed the receivers to send a letter to every stockholder requesting an expression of his preference on the question whether the assets should be restored to the directors or the company liquidated. The letter mailed to the stockholders follows:

"NEW JERSEY BANKERS SECURITIES CO.

Counsel to Receivers:

Leber & Ruback
60 Park Place,
Newark, N. J.

John J. Stamler and
Nicholas La Vecchia,
Receivers,
60 Park Place,
Newark, N. J.

"TO THE STOCKHOLDERS OF THE NEW JERSEY BANKERS SECURITIES CO.:

The Chancellor of the State of New Jersey wants to hear from you whether you want your share of the Company assets paid to you or whether he should hand the property back to a board of directors to carry on the Company's business. He also wants to know whether the board of directors recently elected are satisfactory to you or whether you want to vote for a new board. You must send him your answer at once.

The company has about one million seven hundred thousand dollars ($1,700,000) to be divided among shareholders. It ought to net to each share between three and four dollars. (The company also has assets of uncertain value of about two million dollars.) It is proposed to pay at the present time one dollar and a half a share and the balance in a short time if the company is to be wound up. The new board of directors want the Company to go on with its business. They think they can invest the capital and make the stock worth more per

share than will be paid to you if the money is divided among the stockholders. It is for you to say what you want done.

This letter is written by direction of Vice-Chancellor Backes who has the trust in charge for the Court of Chancery of New Jersey. GIVE YOUR ANSWER ON THE ENCLOSED POSTAL CARD BY RETURN MAIL.

Annexed hereto is a list of the directors elected recently at a meeting of about fifteen hundred stockholders out of about ten thousand. We understand all stockholders had notice of the meeting. Also annexed is a statement of the standing of the Company prepared by us.

Yours very truly,

JOHN J. STAMLER and
NICHOLAS LA VECCHIA,
Receivers."

(S. of C., pp. 547-548.)

Appended to the letter was a financial statement of the company as of March 7, 1930, showing assets as follows:

Quick Assets	$1,703,101.08
Assets of Undetermined Value	2,413,618.35

and liabilities as follows:

Claims against New Jersey	
Bankers Securities Co. in dispute	67,266.72
John Warren (claim in litigation)	306,108.66
	$ 373,375.32

The name and address of each member of the Board of Directors, were listed. Enclosed in every letter was a stamped, numbered post-card addressed to the receivers, containing three propositions in the following order:

"(1) I want my share in cash now.

or

(2) I want the company turned over to the directors named in your letter.

or

(3) I want a new board of directors."

and each stockholder was requested to check the proposition he desired (S. of C., pp. 550-551).

The result of the post-card ballot left no uncertainty over the stockholders' attitude. The post-cards came back with an overwhelming majority of the stockholders voting, to have the property turned over to the newly elected Board of Directors (S. of C., pp. 543, 559). The 172,000 shares held in trust for the company were not voted in this ballot.

After the post-card ballot, the Court stated that the receivership should be terminated, and the property restored to the company, but that by reason of a technical question concerning the election of January 16, 1930, it felt that a new election should be held under the supervision of a master of the court (S. of C., p. 553) and accordingly, appointed Ralph E. Lum, Esq., a Master in Chancery, to conduct such election (S. of C. p. 561). The hearing on the order to show cause of March 10th was continued to April 23, 1930.

A stockholders' meeting was held under the supervision of the said Ralph E. Lum. The result was that the same nine men previously elected,

were again elected directors of the company (See Report of Master, S. of C., p. 562).

On April 23, 1930, the adjourned date of the aforesaid orders to show cause, the defendant company presented a supplemental petition reciting the results of the post-card ballot and of the election held under the Master's supervision and urging the restoration of its property to the company (S. of C., p. 541). After argument on the petition and supplemental petition for restoration, and on the legality of the stockholders' meeting, the Court directed counsel for the complainant to present an order to show cause why an injunction should not issue and a statutory receiver be appointed (S. of C., p. 640).

On April 23, 1930, a notice of appeal was taken by the defendant company from the original order appointing receivers, made on August 8, 1929 (S. of C., p. 1).

An order to show cause prepared in accordance with the court's direction was allowed April 29, 1930, returnable May 13, 1930. It provided for service upon the stockholders and creditors of the defendant company and required them to show cause why an injunction should not issue and statutory receivers be appointed. On the return date of said order to show cause, the court conducted a further summary hearing, over the written objections of counsel for defendant company.

At the conclusion of said hearing, an order was made appointing John J. Stamler and Nicholas La Vecchia statutory receivers and issuing a statutory injunction.

No appeal has been taken from that order because (1) the lodging of the appeal on April 23, 1930, from the order of August 8, 1929 precluded and prevented further proceedings with reference to the

subject matter of the said appeal; (2) no new evidence justifying the appointment of statutory receivers and the issuance of an injunction came into existence between August 8, 1929 and May 29, 1930, the date of the new order; (3) two summary hearings may not be held nine months apart on the same bill of complaint.

On May 6, 1930, the defendant company filed an additional petition praying that its previous petitions for the restoration of its property be disposed of (S. of C., pp. 568-573), and that all further proceedings be stayed pending the decision of the Court of Errors and Appeals on the appeal filed April 29, 1930. The motion for a stay was denied forthwith (S. of C., p. 641). The motion for the restoration of defendant's property was denied by order dated June 24, 1930 (S. of C., p. 587). This is the order from which the second appeal is taken.

Recapitulating the history of the litigation since July 25, 1929, we find the following salient facts:

1. On July 25, 1929, custodial receivers were appointed for defendant.

2. No notice of their appointment was given to its credtors or stockholders, as required by Chancery Rule 111b.

3. On August 1st and 2nd, 1929, a summary hearing was held upon the allegations of the bill of complaint. The stockholders had no notice of this hearing.

4. On August 8, 1929, a decree was made appointing Messrs. Stamler and La Vecchia

permant receivers of the defendant. No notice of their appointment was given to stockholders or creditors.

5. On December 4, 1929 an order to show cause was made why a liquidating dividend should not be paid and temporary allowances made to the receivers and their counsel (S. of C., p. 604). The order to show cause was mailed to stockholders and creditors with a notice that the receivers and their counsel would apply for $25,000 each.

6. On January 16, 1930, the stockholders elected a new board of directors after conducting a meeting at their own expense, and voted almost unanimously in favor of continuing the business.

7. On January 27, 1930, the company's petition for restoration was filed, and an order to show cause why the receivership should not be terminated was allowed.

8. On February 4, 1930, the Court ordered a post-card ballot and the result was overwhelmingly in favor of the continuation of the business and the restoration of the company's property to the board elected by the stockholders.

9. On March 10, 1930, by direction of the Court, another order to show cause why the receivership should not be terminated was prepared and served by the receivers.

10. On April 7, 1930, the Court ordered a new election under the supervision of a Master in Chancery.

11. On April 17, 1930, a stockholders' election was conducted by the Master and the same directors were again elected.

12. On June 24, 1930 an order was made denying the petitions for restoration.

D. Facts concerning allowance of fees.

On December 4, 1929, the receivers and their counsel gave notice that they would apply to the Court for allowances of $25,000 each, a total of $75,000 (S. of C., p. 606). Their application was opposed by the Stockholders' Protective Committee and was not decided. On March 10, 1930 an order to show cause was made why the receivership should not be terminated, final allowances made to the receivers and their counsel and the defendant's property restored to its directors. The order to show cause mailed to the stockholders was accompanied by the following notice:

> "To the Stockholders of the New Jersey Bankers Securities Company.
>
> TAKE NOTICE, that should the Court on the return of the Order to Show Cause, whereof a true copy accompanies this notice, determine to end the Receivership and to turn over the assets held by the Receivers to the Board of Directors mentioned in said Order to Show

Cause or to any other Board of Directors, the Receivers and their counsel will ask for permanent and final allowances for all the services rendered by them in this matter up to March 26, 1930 (including the services for which application for temporary allowances has heretofore been made and is now pending).

The final allowances will be applied for as follows:

To John J. Stamler, Receiver ... $35,000.00

To Nicholas La Vecchia, Receiver $35,000.00

To Leber & Ruback, both as Solicitors for the Complainant and Counsel to the Receivers ... $35,000.00"

(S. of C., p. 537).

Thereafter the Court held a hearing to determine the value of the services rendered by the receivers and their counsel. At the end of the day's session a direction was made that further testimony be taken before a Master. Thereafter this direction was recalled (S. of C., p. 599).

On July 1, 1930, the Court made an order allowing the receivers and their counsel $10,000 each on account (S. of C., p. 595). This order is the subject of the third appeal.

Grounds of Appeal.

PART ONE—AS TO DECREE OF AUGUST 8, 1929:

1. The Decree of August 8, 1929 is not justified by Section 65 of the Corporation Act.

2. The proof failed to establish the jurisdictional facts prescribed by the 1912 Amendment to Section 65 of the Corporation Act.

3. The proof failed to establish the jurisdictional element that the appellant's business could not be conducted with safety to the public and advantage to the stockholders.

4. The proof failed to establish the jurisdictional element that the appellant's business was being conducted at a great loss when the bill was filed, and the alleged depreciation in the value of appellant's assets did not constitute a "loss" under the statute.

5. The violation of Section 65 of the Corporation Act was not manifest and reasonably apparent, and hence no receiver should have been appointed thereunder.

6. The 1912 Amendment to Section 65 of the Corporation Act is unconstitutional under the State and Federal Constitutions.

7. The Decree of August 8, 1929 and the proceedings taken thereunder were not within the general equity jurisdiction and powers of the Court of Chancery.

8. The Decree of August 8, 1929 is void because no notice of the proceedings was given to stock-

holders of the defendant company, and the Court had no jurisdiction to make said Decree.

9. The Decree of August 8, 1929 is void because it deprived the stockholders of defendant company of their property without due process of law.

10. The Court below erred in receiving and considering evidence relating to transactions preceding the dismissal of the bill of complaint in the suit of Fannie Mayer v. New Jersey Banker's Security Co.; and committed other errors in the admission and exclusion of evidence at the summary hearing.

PART TWO—AS TO ORDER OF JUNE 24, 1930:

1. The Order of June 24, 1930 denying restoration of the company's property was erroneous and unjustified.

2. The Court below erred in refusing to order the restoration of the company's property to the Board of Directors legally elected by the stockholders.

3. The Court below erred in refusing to order the return of the company's property as soon as the reason for the receivership ceased.

4. The Court below erred in refusing to order the return of the company's property after the provisions of Section 69 of the Corporation Act had been satisfied.

PART THREE—AS TO ORDER OF JULY 1, 1930:

1. The Order of July 1, 1930 allowing $30,000 on account to the receivers and their counsel was erroneous in law and unjustified by the facts.

BRIEF OF THE ARGUMENT.

Part 1. Argument on Appeal from Decree of August 8, 1929.

POINT I.

The Decree of August 8, 1929, is not justified by Section 65 of the Corporation Act.

1. The proceedings were brought under the statute.

The theory of the bill of complaint in the present action is that the business of the defendant company has been and was being conducted at a great loss and greatly prejudicial to the interest of its stockholders, so that its business cannot be conducted with safety to the public and advantage to its stockholders. It prays for the appointment of a statutory receiver, and the issuance of a statutory injunction. It is framed to meet the requirements of Section 65 of the General Corporation Act. The entire proceeding is statutory in its nature. The original order to show cause dated July 25, 1929 required the defendant to show cause why a receiver should not be appointed "according to the Statute in such case made and provided" (S. of C., p. 16).

In opening the hearing the Court said:

> "I am here this morning to summarily hear the question raised by the bill. The issue here is whether the New Jersey Bankers Securities Company is doing business at a great loss, greatly prejudicial to the company and to the creditors" (S. of C., p. 76).

At the termination of the hearing the Court emphasized the statutory nature of the proceeding in the following language:

> "As to the suit for the appointment of a statutory receiver for the New Jersey Bankers. From its inception to the present day the Bankers Company has been a losing venture; and I find that it has been and is carrying on its business at a great loss and greatly prejudicial to the interest of the stockholders, so that it cannot within the near future resume its business with safety to the public and advantage to its stockholder (I mean to use the language of the statute) and that statutory receivers are warranted" (S. of C., p. 61).

The Court thereupon signed the decree of August 8, 1929, which contained the recital:

> "and it appearing to the court and the court finding the fact to be that the defendant's business has been and is being conducted at a great loss and greatly prejudicial to the interests of its stockholders, so that its business cannot be conducted with safety to the public and advantage to the stockholders, and further that the said company is without a board of directors to carry on its business functions, but being also of the further opinion that it may be for the best interests of the defendant company that the Statutory Receiver warranted by the court's said findings of fact should not at this time be appointed, but that Receivers in Equity should at this time be appointed to serve, as such, until the further order of this court, and that the appointment of a Statutory Receiver should be deferred and

reserved until future application therefor" (S. of C., pp. 53-54).

Despite the fact that the receivers appointed were designated as "Receivers in Equity," they were invested with powers peculiar to receivers appointed under the Corporation Act and wholly foreign to equity receivers. The order of appointment contained the following provision:

> "and the said Receivers are authorized and directed to liquidate the affairs of said corporation and are authorized and empowered to sell and dispose of any property of the company, real and personal, and to give good and sufficient deeds and instruments of conveyances or transfer, subject, however, to prior confirmation of sale by this court" (S. of C., p. 57).

The power to give deeds and instruments of conveyance or transfer necessarily vests in the receivers title to the company's assets and neither title nor the power of liquidation are characteristic of equity receivers. Clark on Receivers, Vol. I, pp. 459, 460; *Atlantic Trust Co.* v. *The Consolidated Electric Storage Co.*, 49 N. J. Eq. 402.

It thus appears that the bill of complaint, the order to show cause, the summary hearing, the Court's decision and the decree of August 8, 1929, all establish that the proceedings are governed by Section 65 of the General Corporation Act, which provides:

> "Whenever any corporation shall become insolvent or shall suspend its ordinary business for want of funds to carry on the same, *or if its business has been and is being conducted at a great loss and greatly prejudicial to the*

interest of its creditors or stockholders, any creditor or stockholder may by petition or bill of complaint setting forth the facts and circumstances of the case, apply to the Court of Chancery for a writ of injunction and the appointment of a receiver or receivers or trustee or trustees, and the court being satisfied by affidavit or otherwise of the sufficiency of said application and of the truth of the allegations contained in the petition or bill, and upon such notice, if any, as the court by order may direct, may proceed in a summary way to hear the affidavits, proofs and allegations which may be offered on behalf of the parties, and if upon such inquiry it shall appear to the court that the corporation has become insolvent and is not about to resume its business in a short time thereafter, *or that its business has been and is being conducted at a great loss and greatly prejudicial to the interest of its creditors or stockholders, so that its business cannot be conducted* with safety to the public and advantage to the stockholders, it may issue an injunction to restrain the corporation and its officers and agents from exercising any of its privileges or franchises and from collecting or receiving any debts or paying out, selling, assigning or transferring any of its estate, moneys, funds, lands, tenements or effects, except to a receiver appointed by the court, until the court shall otherwise order (L. 1896, ch. 185, p. 298, Sec. 65 (C. S., p. 1640, Sec. 65), as amended by L. 1912, ch. 300, p. 535, Sec. 1; S. 47-65)."

The portions italicized were added by the Amendment of 1912, to which we shall refer at length hereinafter.

There was no finding by the Court, nor any contention by complainant that the defendant company was insolvent or that it had suspended its ordinary business for want of funds to carry on the same. In fact, the testimony and the accountants' reports conclusively established that the company at the time of the filing of the bill was, and ever since has been solvent. We shall therefore address ourselves to the provisions of the statute relating to insolvency and suspension of business no further.

The portion of the statute under which the Court found that it was warranted in appointing a statutory receiver and issuing a statutory injunction was added to Section 65 of the General Corporation Act by the Amendment of 1912.

Chancellor Walker stated in *Bull* v. *International Power Co.*, 84 N. J. E. 209, at page 212:

> "It appears, therefore, that prior to the amendment of April 1st, 1912, a receiver could be appointed for a corporation which had become insolvent or had suspended its ordinary business for want of funds to carry on the same. Now, a receiver may be appointed, not only if the corporation be in the situation just described, but also if its business has been and is being conducted at a great loss and greatly prejudicial to the interest of its creditors and stockholders."

Our present inquiry therefore is concerned with the amended portions of Sec. 65. We must determine the meaning of the amendment of 1912 by reference to the history of the Act prior to the amendment; the purpose, intent, and judicial interpretation of the amendment; and the attitude of the State of New Jersey toward corporations in general.

2. The history and character of Section 65 prior to the Amendment of 1912.

In 1829, the State of New Jersey passed a law entitled "An Act to Prevent Fraud by Incorporated Companies" (Laws of 1829, pp. 58-60). This act related solely to insolvent corporations. Section 6 read as follows:

> "That whenever any incorporated company shall have become insolvent, it shall and may be lawful for any creditor or stockholder of the said company to apply, by petition or bill of complaint to the Chancellor, setting forth the facts and circumstances of the case, for a writ of injunction and the appointment of a receiver or receivers or trustee * * * whereupon the Chancellor, being satisfied of the sufficiency of said application, and also of the truth of the facts and allegations contained in said petition or bill, by affidavit or otherwise, and upon giving when so ordered, such reasonable notice to be served or published as the Chancellor, in an order to be made for that purpose, shall direct, the Chancellor may proceed in a summary way to hear the affidavits, proofs and allegations which may be offered by or on behalf of the parties, and if upon such inquiry into the matters or cause of complaint, it shall be made to appear to the Chancellor that the said company has become insolvent, and shall not be able to resume its business in a short time thereafter, with safety to the public and advantage to the stockholders, it shall and may be lawful for the Chancellor to issue an injunction."

This section remained unchanged until 1875, when an Act was passed entitled "An Act Concern-

ing Corporations" (Revision of 1875). In this revision, Sec. 70, there was added, for the first time, the language "or shall suspend its ordinary business for want of funds to carry on the same."

In 1896, "An Act Concerning Corporations" was passed (Revision of 1896, Laws 1896, Chapter 185). The quoted section appeared in Section 65 of the revision of 1896, unchanged in substance. In 1912, Section 65 was amended to include the italicized portions hereinabove set forth (Laws of 1912, Chap. 300, p. 535, Sec. 1).

The purpose of Section 65 prior to the amendment of 1912 was similar to that of the bankruptcy laws. It was intended to afford an equal distribution of assets among the creditors of an insolvent corporation.

In *Receivers of People's Bank* v. *Paterson Savings Bank,* 10 N. J. Eq. 13, the Chancellor said at page 17:

> "The object of 'the act to prevent frauds by incorporated companies' is to secure to the creditors of such institutions an equal distribution of its assets. This is the primary object of the statute. Any act done with the view and for the purpose of defeating this object, is a fraud upon the act, and is illegal.
>
> "The primary object of this act being the same as that of the bankrupt laws, in giving a construction to it we may properly examine those general principles which have been established by the courts in reference to transactions under those laws."

See also

Rawnsley v. *Trenton Mutual Life Insurance Co.,* 9 N. J. Eq. 347;

State Bank v. *Receivers of Bank of New Brunswick,* 3 N. J. Eq. 266;
Butler v. *Commonwealth Tobacco Co.,* 74 N. J. Eq. 423.

Section 65 of the General Corporation Act is frequently termed by the New Jersey courts "The Insolvent Corporation Act." Thus, in *Gallagher* v. *Asphalt Co. of America,* 65 N. J. Eq. 258, at page 259, the Court said:

> "The bill is filed under our Insolvent Corporation Act—the old act, first passed in 1829, entitled 'An Act to prevent fraud by incorporated companies'."

3. The Amendment of 1912.

(a) *Its Purpose and Scope.*

Before 1912, the Court of Chancery had the power under the statute to wind up corporations only if they were actually insolvent.

As was said, in *Edison* v. *Edison United Phonograph Company,* 52 N. J. Eq. 620, at page 623:

> "Nothing short of present actual insolvency will warrant the appointment of a receiver for such a purpose."

It is evident that there may be corporations which, while not actually insolvent in the sense that there is a "general inability to meet pecuniary obligations as they mature by means of their available assets or honest use of credit" (*Wright* v. *American Finance & Securities* (84 N. J. Eq. 415); are nevertheless potentially insolvent in the respect that if they are permitted to continue for

a short period, actual insolvency must inevitably ensue. To care for the latter class of corporations —those which are potentially insolvent—the Legislature added the amendment of 1912.

In *Kron* v. *Trenton Automotive Collateral Co.*, 96 N. J. Eq. 162, at page 164, the Court said:

> "That, however, in my view, is not the thing which the legislature had in mind. It is clearly quite a different thing from the continuing conduct and operation of the company's business at a loss, which, if not terminated, will result in insolvency. This latter is my interpretation of the statutory language. The original design of the statute was to provide for the enjoining and winding up of a corporation which had become actually bankrupt, or by reason of inability to function normally by paying its current bills and keeping its business going, become so moribund as to make bankruptcy an inevitable result in the ordinary course of events, and the purpose was to preserve to the creditors—and stockholders, too, if possible—the assets that would inevitably otherwise be lost to them.
>
> "The 1912 amendment contemplates a point just anterior to those expressed in the original act, in the commercial descensus Averni, but still, nevertheless, as must be judged from consideration of the history and design of the legislation, a point at which recovery has become, as a practical matter, impossible—a point where nothing but the intervention of the state, can prevent capital loss to stockholders or creditors, or both, namely, that point in the business career where the business 'has been' and 'is being' conducted at great

> loss and 'cannot be' in future conducted with safety, &c."

In *Fox* v. *Pathe Exchange,* 106 N. J. Eq. 522, the Court construed the 1912 amendment as contemplating "inevitable and imminent future insolvency" and pointed out that in *Baldwin* v. *Berry Automatic Lubricator Co.,* 99 N. J. Eq. 57, 60, (Ct. of Errors and Appeals, 100 N. J. Eq. 362), the statute was interpreted in a similar way when the Court there held:

> "An injunction may issue and a receiver be appointed * * * upon insolvency actual or potential * * *."

(b) *Its Legislative History.*

In 1912, Gov. Silzer, then a State Senator, introduced the amendment in the form of Senate Bill No. 272. At that time the amendment read as follows:

> "Or if its business has been and is being conducted at a great loss or greatly prejudicial to the interest of creditors and stockholders * * * or that its business had been and is being conducted at a great loss or greatly prejudicial to the interest of creditors or stockholders so that its business cannot be conducted * * *" (Senate Bills, 1912, Bill No. 272).

The Senate passed the Bill in this form and sent it to the Assembly. The Assembly approved the Bill with the following amendments: In the second line quoted above, it changed the word "or" between the words "loss" and "greatly" to "and," and did likewise in the fifth line. It also inserted

the word "its" before the word "creditors" in the third line, and before the word "creditors" in the sixth line (Minutes of the Assembly of the State of New Jersey, 1912, pp. 1322-1323). The Senate concurred in the amendments, and the Bill was passed as amended by the Assembly in its present form (Senate Journal, 1912, p. 958).

As originally passed by the Senate, the amendment of 1912, provided that a corporation could be wound up where its business has been and is being conducted at a great loss or greatly prejudicial to the interest of its creditors, etc. In other words, if the corporation suffered a great loss, a complainant could wind it up without proof that it was being conducted in a manner greatly prejudicial to the interest of its creditors. The Assembly refused to pass the Bill in this form. Accordingly, it changed the conjunction "or" to "and", making it necessary to prove not only that the business was and is being conducted at a loss, but that it was also being conducted in a manner greatly prejudicial to the interest of its creditors, etc. The Assembly apparently took cognizance of the fact that the Bill as passed by the Senate, would restrict corporate endeavor and frighten corporations away from the State, and accordingly insisted that the causes for which a corporation can be wound up be made more rigorous. It appears therefore, that the Legislature in enacting the amendment of 1912, had corporate creditors uppermost in mind and intended merely to empower the appointment of a receiver at a point immediately anterior to actual insolvency, but no further down in the "commercial descensus Averni."

(c) *Its Intepretation and Meaning.*

The few decided cases cited above construe the amendment of 1912 to mean that the corporation

must be potentially insolvent, or that its insolvency is immediately and inevitably imminent. But there are no judicial interpretations for the words "conducted at a loss", and "safety to the public and advantage to the stockholders".

Meaning of "Loss."

The appellant contends, that the amendment, in using the words "loss" means an operating loss and not a capital loss. Further that the statute contemplates a usual, ordinary and recurring loss, and not an extraordinary and non-recurring loss.

The amendment provides that when a business "has been and is being conducted at a-great-loss," etc., statutory relief may be invoked. The language relates to losses sustained in the operation of the business, i.e. operating losses, and none other. If it were intended to cover losses other than those sustained in the conduct of the business the statute would have read as follows:

> "and if upon such inquiry, it shall appear to the court that the corporation has become insolvent and is not about to resume its business, or has and is suffering great loss," etc.

The fact that the amendment did not employ the grammatical and logical scheme of the clauses immediately preceding, by continuing to use the word "corporations" as the subject of the verbs contained in the amendment, but substituted therefor the word "business," as the subject of "has been and is being conducted," is a clear manifestation that the loss intended is limited to an operating loss.

This conclusion is fortified by the further language of the statute which must be read in *pari*

materia with the words "conducted at a great loss." The statute couples the phrases "its business has been and is being conducted at a great loss" with the phrase "so that its business cannot be conducted with safety to the public and advantage to the stockholders." The loss is thus required to be of such a character that from the loss itself it may be determined that the business of the company cannot be conducted with safety to the public, etc.

Only one kind of loss can furnish an index to the future successful operation of a business, and that is an operating loss. Accountants and business men, in trying to foretell the future of a business, look only to the operating profit and loss statement, and are not influenced by extraordinary and non-recurring items of loss.

In *Kron* v. *Trenton Automotive Collateral Co.*, supra, the Court makes the same distinction we have made. In that case, the defendant corporation was organized with a capital of $250,000. The company received only $50,000 for its entire capital stock, and thus sustained a capital loss of $200,000 at the outset. The Court said:

> "Obviously there was a serious impairment of the company's capital—a loss of 80% thereof, although perhaps strictly it can scarcely be said that this loss was the result of the conduct of its business—that is, the ordinary business that it was to carry on under its certificate of incorporation."

On these facts, the Court refused to appoint a receiver under the statute holding that the loss proven was a capital loss and not an operating loss and that the amendment of 1912 contemplated solely an operating loss.

In the instant case, the losses alleged to have been sustained by the defendant corporation as will hereafter be shown, were extraordinary and non-recurrent, did not arise in the normal operation of the business, and are not such as are contemplated by the amendment of 1912.

In the use of the words "conducted at a loss" under Sec. 65, the statute does not specify for how long a period the loss must continue. What period of time does the statute contemplate?

Obviously not a day or a month. It is conceivable that in certain cases where a business is complex and requires considerable organization, even years might be insufficient to bring the corporation within the purview of the amendment.

It certainly would be improper to take the profit and loss statement of the organization period, which might last a year or two, and attempt to judge the future of the business upon such a statement. A business corporation requires a reasonable opportunity to organize and to complete the preparatory steps necessary for the successful management and operation of its business.

In the instant case, the defendant company has not been permitted to operate for a reasonable length of time within the contemplation of Section 65. Before this suit was brought its growth had been interrupted by the Mayer suit, the Davis Investigation and the first Bernstein suit. Moreover, it should be remembered that defendant is an investment company, and the future of such a company cannot be judged by the fact that its initial investments, viewed two years after its organization have proven to be less profitable than originally planned. There is nothing in the proof which indicates that if the defendant company should continue to operate in the future, it could

not avoid the pitfalls which have beset it from the beginning, and would not profit by the experience gleaned in its brief history.

Meaning of "safety to the public and advantage to the stockholders."

A further jurisdictional prerequisite to relief under the statute is proof that the business of the company "cannot be conducted with safety to the public and advantage to the stockholders."

The meaning of "safety to the public" and "advantage to the stockholders," we now proceed to consider in inverse order. In the *Kron* case, supra, it was held that the fact that a company had not paid a dividend for years, is no basis for invoking the statutory relief.

> "There are many corporations which have not paid a dividend on common stock for years and cannot be expected to do so in many more years, but I have not known of any attempt to use that as a ground for winding up or receivership, in the absence of bad faith in the corporate management" (at 165).

In *Kelly* v. *Kelly Springfield Tire Co.*, 106 N. J. Eq. 545, it was held that the fact that a corporation had lost money and was not paying dividends did not warrant statutory relief and accordingly the bill was dismissed. To the same effect see *Fox* v. *Pathe Film*, supra.

It would appear, therefore, that "advantage to the stockholders" does not necessarily comprehend a return on their investment in the form of dividends. The meaning of the phrase "advantage to the stockholders," must be that the company can, by reason of its financial condition, continue to

function and conduct its business with a reasonable assurance to the stockholders that the enterprise, in which they have invested, will safely continue in the manner contemplated by the charter and certificate of incorporation.

The meaning of "safety to the public" is less obvious. Stockholders would not appear to be included in this phrase because they are already specifically mentioned in the statute. The term "public," in all likelihood means "present and future creditors of the corporation." The primary purpose of the statute, as we have seen, is and always has been to protect the creditors of corporations actually or potentially insolvent. The nearest approach to a definition of "public" in our reports is found in *Gallagher* v. *Asphalt Co. of America,* 67 N. J. Eq. 441, at page 447, where the Court says:

> "the public at large * * * has a further distinct interest in preventing an insolvent corporation from contracting obligations and from continuing its business operations in which it may deceive new parties and thereby perpetrate fraud."

The amendment aims to protect those members of the public who may become creditors of a corporation when it is on the verge of insolvency, and who may be induced to extend credit in the belief that it is a going, solvent concern. "Safety to the public" is certainly not used in the same sense as in our criminal law, i. e., in the sense that a crime is an offense against the whole public or the commonwealth. "Public" in Sec. 65 has a restricted meaning and should be confined to those members of the public who may become creditors of a potentially insolvent corporation.

A reading of Sec. 69 of the Corporation Act verifies our construction of the phrase "safety to the public." Sec. 69 provides, in substance, that even after the jurisdictional elements have been proven, and statutory receivers have been appointed, the court may return the company to its stockholders and discharge the receivers if:

(1) The debts of the corporation have been paid or provided for;

(2) There remains or can be obtained by further contribution sufficient capital to enable it to resume its business.

The statute says nothing about "safety to the public." It follows that when a company has provided for the payment of its debts and has sufficient capital to resume its business, it is in a condition where it can be conducted with "safety to the public and advantage to the stockholders."

Reading Sections 65 and 69 together, we have the legislature's definition of a corportaion that cannot be "conducted with safety to the public and advantage to its stockholders," as distinguished from one that can. The distinguishing feature is the corporation's financial ability to meet its obligations as they accrue. Where such ability exists, there is no exigency warranting the intervention of the Court; and where, after a receiver has been appointed, that ability is restored, the Court's guiding hand should be withdrawn, and the assets of the corporation returned to its stockholders.

Professor Ballantine in his work on Private Corporation (1927), states (p. 4):

> "The ordinary business corporation, however, is not organized for the purpose of per-

> forming any public function and the state has no particular interest in its powers or their exercise. It is only those who invest their money in them as stockholders or bondholders or deal with them as creditors who have a substantial interest in keeping them within the limits of their corporate purposes or in their existence or dissolution."

In the light of the foregoing interpretations of the meaning of "safety to the public" and "advantage to the stockholders", it appears plain that the present complainant has utterly failed to prove a case within the amendment of 1912. By no proper proof has he established that the solvent defendant corporation could not conduct its business with safety to the public and advantage to the stockholders.

(d) *The Amendment of 1912 must be strictly construed.*

In *Atlantic Trust Co.* v. *The Consolidated Storage Co., supra,* the Court said at page 404:

> "The power to dissolve an insolvent corporation and wind it up is statutory. It formed no part of the original jurisdiction of the court. It was conferred by a statute passed in 1829; * * *."

To the same effect see *Cook on Corporations* (8th Ed.), Sec. 629.

In *Reinhardt* v. *Inter-State Telephone Co.,* 71 N. J. Eq. 70, the Court, referring to Section 65, said:

> "Now, it requires no argument to sustain the position that the act in question, being in

derrogation of the common law, must be construed strictly."

In 36 Cyc. 1179, the rule is stated as follows:

> "All statutes in derogation of the common law are to be construed strictly. Where the statute not only effects a change in the common law, but is also in derogation of common law rights, it must be construed with especial strictness."

A strict construction of the amendment of 1912 would therefore limit its application as narrowly as possible, and resolve every doubt and uncertainty of language in favor of the corporation. In the instant case the existence of the jurisdictional prerequisites within the strict meaning of the amendment of 1912 were so problematical and speculative that the order of August 8th should not have been made.

4. Policy of the State of New Jersey with reference to corporations.

In attempting to arrive at the true meaning of the Amendment of 1912, a review of the policy of the State of New Jersey toward corporations may be helpful.

The "Report of the Commission to Revise the Corporation Laws of the State of New Jersey" of 1917, states at page 3:

> "The policy of this State with reference to corporations has been to encourage business through these agencies."

and at page 7:

> "Those laws now sought to be repealed are harmful to the State because there is much uncertainty as to their meaning, with the result that those who would have otherwise incorporated here or remain here, are going to other states. There is no gain to the people of the country, but this State loses a revenue which is perfectly legitimate."

Gov. Fort, in submitting the Report of Commissioners to revise and codify the "General Act of Corporations of 1908" said, at page 7:

> "Nothing should be done by our State to jeopardize its large revenue from corporations."

The Commission of 1908 in its report, said at pages 10 and 11:

> "It is not less important to remember that the greatest possible freedom of action must be preserved to the owners of business corporations—freedom to develop, to experiment, to venture, to take risks and hazards, to exploit new inventions and ideas, to spend the vast capital needful to bring them to successful issues. Such freedom has resulted in developing untold wealth for the community in the past, and must be allowed to do so in the future * * *. In a word, if men are to do business organized in the form of a company, they must retain practically the same freedom they would have in their individual capacities."

In the same vein is the expression of the Court of Errors and Appeals, in *Greenbaum* v. *Lafayette & Broad Realty Corp.*, 96 N. J. Eq. 317, at page 319:

"Our Corporation Act, operating as a variation from the common law, is intended to encourage honest consolidation of effort, and not to retard it; and our cases illustrative of this principle have consistently manifested a repugnancy to judicial intervention in corporate business affairs, except where the violation of the provision of the statute is manifest and reasonably apparent. *Atlantic Trust Co.* v. *Cons. Co.*, 49 N. J. Eq. 402; *Benedict* v. *Columbus Co.*, 49 N. J. Eq. 23; *Sternberg* v. *Wolff*, 56 N. J. Eq. 389; *Fort Wayne Co.* v. *Light Co.*, 57 N. J. Eq. 16"

In *Atlantic Trust Co* v. *Consolidated Electric Storage Co.*, supra, the Court denied an application for the appointment of a receiver, and the case is of sufficient importance to warrant quotation at length, especially in view of the fact that the rules of law so clearly stated have been approved by this Honorable Court. (See *Greenbaum* v. *Lafayette & Broad Realty Corp.*, supra.) At page 406:

"The proof in support of a jurisdictional fact must always be clear and convincing, for the court derives its power from the fact, and hence, until the fact is shown to exist it has no power. To doubt in such a case is to deny. The adoption of the opposite rule would unquestionably, in some cases, result in usurpation or an abuse of power. This is the view expressed by Governor Pennington, in *Brundred* v. *Paterson Machine Co.*, supra. He there said, that where the proofs left the fact of insolvency in doubt—his words are 'if it be a balancing question'—and the conduct of

those who have had the management of the affairs of the corporation appears to have been upright and just, the court must resolve its doubt against the application and refuse to interfere. Nor is it the duty of the courts to use its power in all cases where insolvency is shown. Something more is required. The prerequisites prescribed by the statute are, that it shall be made to appear that the corporation has become insolvent, and, also, that it will not be able to resume its business in a short time with safety to the public and advantage to the stockholders. The power is only to be used when the ends of justice require its exercise. The court should strive in such cases to foster and preserve rather than to strangle or destroy. * * * The principle which I think should control the court in the exercise of this power is this: never to appoint a receiver unless the proof of insolvency is clear and satisfactory, and unless it also appears that there is no reasonable prospect that the corporation, if let alone, will soon be placed, by the efforts of its managers, in a condition of solvency. To illustrate: Where the corporation attacked is shown to be insolvent, but it also appears that its managers are honest and capable and that they are striving to the best of their ability, with a fair prospect of success, to relieve the corporation from its embarrassment and to put it in a condition where it may prosecute its business successfully, and the property of the corporation is free from judgment or other lien under which it may be sold speedily, at a sacrifice, the court should not interfere. Mere insolvency is not enough to induce the court to act; but to induce it to act, such a state of in-

solvency must be shown as satisfies it that the corporation will not be able in a short time to resume its business with safety to the public and advantage to the stockholders. Such I understand to have been the view entertained by Governor Pennington. In *Brundred* v. *Paterson Machine Co.*, supra, he said, at page 305:

> 'It would be unwise, and against public policy, to seek an occasion for interference with any corporation, so long as they are striving against adversity with an honest purpose, unless their case is hopeless, or their course of action so unfair as to jeopardize the interests of creditors and the public.' "

To the same effect is the language of this Court in *Glaser* v. *Achtel Stetter's Restaurant,* 106 N. J. Eq. 150,

> "The spirit of the statute relating to the appointment of a receiver aims to accomplish, by such appointment, the preservation of the interest of the stockholders and creditors, therefore, when it appeared, as it did in this case, that the appointment of a receiver would only add an additional burden upon the burden which already weighed heavily upon the estate, and tended to eat up all the available assets by receiversihp expenses, no receiver should have been appointed, and the parties should have been left to pursue their remedy at law. The appointment of a receiver is not a matter of absolute legal right, and, therefore sound discretion should be exercised by the court before any such appointment is made. It is highly inequitable to appoint a receiver

> where it appears that the ultimate result will be a sacrifice of the assets of the corporation wholly to the profits of counsel and receiver and to costs and expenses of such receivership."

It thus appears that the policy of this State is to encourage corporate endeavor as much as possible. In view of this policy, if there is any doubt as to whether the statute has been satisfied, the Court will refuse to enjoin the corporation or appoint a receiver.

> "To doubt in such a case is to deny."
>
> *Atlantic Trust Co.* v. *Consolidated Electric Storage Co.*, supra;
> *Kelly* v. *Kelly Springfield Tire Co.*, supra.

The liberal policy of New Jersey with reference to corporations, clearly indicates that the amendment of 1912 was not intended to be a revolutionary measure granting Chancery Courts the power to wind up corporations which were merely losing money. The statute itself is very specific and limited. It requires:

(1) That the corporation's business has been conducted at a great loss;

(2) That it is being conducted at a great loss;

(3) That the loss is greatly prejudicial to the interests of its stockholders or creditors;

(4) That the nature of the loss is such that its business cannot be continued with safety to the public and advantage to the stockholders.

We have shown that prior to 1912, Section 65 was designed exclusively for the protection of the creditors of corporations actually insolvent, and that the amendment of 1912 was designed for the protection of the creditors of corporations potentially insolvent. The primary purpose of the statute, however, remained unchanged. The amendment merely provided that active measures could be instituted when the corporate debtor was potentially insolvent, whereas prior thereto, actual insolvency was a condition precedent to such measures. *Bull* v. *International Power Co.,* supra.

In the instant case, the bill of complaint alleges that the defendant company has assets of $5,558,584.14, and liabilities of $701,835.67 ($300,000 of which liabilities are stated to be doubtful); the complainant's proof showed assets of $3,273,623 and total liabilities of $9,588.60 (Braverman's Report, S. of C., p. 388).

The above figures are conclusive. They establish that the defendant company was and is, neither insolvent nor potentially insolvent. They prove that the creditors holding $9,588.00 worth of claims are not, and cannot be prejudiced by the continuation of the company's business.

We will now turn our attention to the proof in somewhat greater detail in order to demonstrate how far the complainant's case falls short of establishing the jurisdictional statutory elements.

POINT II.

The proof failed to establish the jurisdictional facts prescribed by the amendment of 1912.

1. The proof failed to establish the jurisdictional element that the appellant's business could not be conducted with safety to the public and advantage to the stockholders.

Complainant-respondent endeavored to show that the business of the New Jersey Bankers Securities Co. has been and is being conducted at a great loss. There is not an iota of evidence in the entire record to show that the appellant's business cannot be conducted with safety to the public and advantage to its stockholders. Upon this question, as upon all questions of this character, complainant has the burden of proof.

> "The burden is on the complainant * * * to show that grounds for the appointment of a receiver exist." 14 A. C. J. 970.

Not only did the complainant fail to sustain this burden, but he made no attempt to go into the question. Hence this case must fall, even though we assume for the purpose of argument, that the company had been conducting its business at a loss and was conducting it at a loss at the time the bill was filed.

2. The proof failed to establish the jurisdictional element that the appellant's business was being conducted, at a great loss when the bill was filed.

The mere statement in complainant's bill of complaint and in his affidavit that the business was

being conducted at a loss and that it could not be conducted with safety to the public and advantage to its stockholders, has no legal efficacy. The facts and circumstances upon which the conclusion is based must be detailed. *New Foundland Railroad Construction Company* v. *Schack,* 40 N. J. Eq. 222.

The proofs with respect to the company's financial condition during the period from September 1, 1928 to March 31, 1929, were adduced at the summary hearing through the complainant's witness and accountant, Harry Braverman. He testified as follows:

> "Q. Yesterday, Mr. Braverman, I asked you to give us some information about the period from September 1, 1928 to April 1, 1929. Have you been able to make up that statement since? A. I have.
>
> Q. And can you tell me the results, please? A. Results of the operation for the seven months, September 1, 1928 to March 31, 1929, show an income—a net profit from operations of $13,984.83.
>
> Q. A net profit for this seven months? A. From operations, of $13,984.83" (S. of C., p. 204).

This profit was figured in the following manner:

Income from dividends on investments	$44,902.50
Interest earned	9,374.03
Net profit on sale of securities	43,388.58
Total operating income	$97,665.11

(S. of C., p. 206.)

The following were the expenses deducted:

Rent	$ 3,500.00
Telephone and telegraph	779.32
Transfer and registration fees	7,738.86
Salaries	18,919.33
Stationery and printing	5,181.01
Postage	2,382.10
Interest paid	514.56
Directors' fees	3,300.00
Legal and professional fees	6,604.52
Sundry expenses	1,164.38
Insurance	673.06
Cash shortage	24.16
Depreciation	518.50
Loss on furniture and fixtures	550.00
Cancellation of leases	31,740.00
Payments for account N. J. Continental Co.	90.48
Total	$83,680.28

(S. of C., p. 206.)

Scrutinizing the expense account, we find an item for cancellation of leases amounting to $31,740. The leases referred to had been entered into by the Board of Directors in office prior to September 1, 1928, which had maintained offices in several cities to aid in the sale of capital stock. The Board elected September 1, 1928, reduced expenses by negotiating the surrender of the leases for these offices, which had become unnecessary. The cost of cancelling the leases was $31,740 but the result was to save the company many times that sum in rentals.

This is not an operating expense because it is a non-recurring item. Having been occasioned in connection with the organization of the company,

it is properly a part of the organization expense, rather than the operating expense. It is an extraordinary item connected solely with the defendant's organization and the sale of its capital stock. As the witness said (S. of C., pp. 206-207):

> "Q. What was the cancellation item that you started to read? A. Well, the company had several leases on which it was paying rentals, and during this period set aside these leases by payment of a certain sum of money.
>
> The Court: New York, Toledo, Chicago.
>
> The Witness: Various cities. And the amount so paid was $31,740.
>
> Q. Those were the leases that were dead horses? A. Yes."

At page 251 of the State of Case, both the Court and the witness, complainant's accountant, agreed that the cost of cancelling the leases was in the nature of a capital and not an operating expense.

> "The Court: Isn't this a fact, that the money spent for cancellation of leases was a capital expense and not an operating expense?
>
> The Witness: In a sense it can be taken either way. It is really in the nature of capital cancellation."

See also S. of C., page 207.

Another extraordinary and non-recurring expense appearing on the above list is the item of $7,738.86 for transfer and registration fees. This item relates solely to moneys expended in transferring the capital stock of the company (S. of C., pp. 207-208).

We also find among the expenses listed an item of $6,604.52 for legal and professional fees of which

$1,000 is chargeable to the old regime (S. of C., p. 207).

For the period from April 1, 1929 to July 25, 1929, complainant's accountant stated that there was an operating loss of $34,377.82 (S. of C., p. 179). Of this amount, $18,604.52 was for legal and professional fees (S. of C., p. 208). These were not contracted in the operation of the company's business, but were extraordinary in their nature and character and should not be included in calculating whether the business has been conducted at a loss (S. of C., pp. 208-209).

The same applies to the contingency reserve of $2,000 set up each month, in the four months period aggregating $8,000 (S. of C., p. 209).

If we deduct the extraordinary expenses above mentioned:

Cancellation of leases	$31,740.00
Contingency reserve	8,000.00
Legal fees	18,604.52
Transfer fees	7,738.86
Total	$66,083.38

we have an operating profit for the period September 1, 1928, to July 25, 1929, of approximately $44,000. In arriving at this figure we do not deduct several other items charged by complainant's witnesses to operating expense but properly chargeable to organization or capital expense, nor do we deduct still others directly attributable to the Davis Investigation, the Fannie Mayer suit, and the Bernstein No. 1 suit.

It will also be noted that during this period, office rent was reduced from $500.00 per month to $250.00 per month. Salaries were cut by at least $12,000 per year, the saving on Mr. Jelin's salary,

which ceased in April, 1929 (S. of C., p. 217). Furthermore, during this period there was a profit, though not an operating profit, of $119,661.00 as a result of forfeitures of subscriptions to the capital stock of the company. Respondent's witness Markel, testified that this $119,661.00 should be added to operating profit, and the audit submitted to the company's officers carried the item in that form (S. of C., p. 250); but respondent's witness, Braverman, testified that it could not be regarded as a profit from operation (S. of C., p. 205), and that it was a gain to the company in the form of a capital profit. But if this view is correct by reason of the fact that the profit was extraordinary and a capital item, by the same token, extraordinary and non-recurring expenses should not be regarded as part of the operating expenses.

Assuming, but not admitting, that all expenses including non-recurring and extraordinary items are entitled to be treated as operating losses, as they were treated by respondent's accountants, the best that respondent could show was an operating loss from September 1, 1928, to July 25, 1929, of $23,000 (S. of C., p. 208). To arrive at this result, it was necessary for respondent's witnesses to flagrantly violate the fundamental principles of accounting and business practice. If due regard were had to the application of those principles, an operating profit of at least $44,000.00 would be shown for this period.

It is important to note that complainant's accountant testified that of the moneys expended from September 1, 1928 to July 25, 1929, $35,488.94 was paid for obligations incurred prior to September 1, 1928 (S. of C., p. 256; see also, p. 428).

As will hereafter be argued, none of the expenses incurred by the company's directors prior to Sep-

tember, 1928, when the Mayer suit was settled, could be employed as a basis for a subsequent receivership. At that time the corporation received a new bill of health from the Court of Chancery. See Point VII, infra.

When this $35,489.94 is deducted from the operating expenses of the period following September 1, 1928, we have a net profit for the period, of $12,000. In Exhibit D-1 (S. of C., p. 516), the accountant Markel deducted the sum of $35,489.94 from the current operating expense. He did likewise in his statement of March 31, 1928 (S. of C., p. 428).

Next, if we take the maximum operating loss shown by the figures of respondent covering the period from September 1, 1928, to the filing of the Bill of Complaint, and compare these figures with the alleged operating loss from August 19, 1927, to August 31, 1928, we find an overwhelming decrease in the alleged operating loss:

First year ending August 31, 1928, operating loss (S. of C., p. 181) ..	$332,522.53
September 1, 1928, to July 25, 1929, operating loss (S. of C., p. 208) ..	$ 23,000.00

If we take the operating loss arrived at on the basis of sound accounting principles and business practice as heretofore set forth, we find the following:

First year ending August 31, 1928, operating loss	$332,522.53
September 1, 1928, to July 25, 1929, operating profit	$ 44,000.00

No matter, therefore, how the picture is distorted by complainant, the worst that can be shown is

that there was a decided improvement for the period from September 1, 1928 to July 25, 1929, over the first year of the company's existence.

The case is within the purview of the decision in *Fox* v. *Pathe Exchange,* 106 N. J. Eq. 262, where in denying relief, the Court said:

> "A careful consideration of the allegations of the bill and affidavits, however, leads to the conclusion that a situation meeting the requirements of the statute in this behalf, is not shown. There are certainly allegations of fact sufficient to warrant the finding that the business of the company has been conducted at great loss—but the statute also requires that it be shown that the business is being conducted at great loss and greatly prejudicial to the interests of its creditors or stockholders and that its business cannot be conducted with safety to the public and advantage to the stockholders. This does not appear in the instant case.
>
> "It does appear by the allegations of the bill and affidavits that the defendant suffered a loss of nearly $2,000,000 in 1927, and the same in 1928; that in 1929 it suffered a loss of nearly $500,000; and in the first quarter of 1930 a loss of $66,431 (which would be at the rate of $250,000 for the year). It thus appears that, even on complainant's allegations, the defendant's losses are being rapidly reduced—hence its condition is bettering; which is very far from showing that defendant's business cannot be conducted with safety to the public and advantage to the stockholders—very far from showing that insolvency is inevitable either in the near future or at any time."

In *Kelly* v. *Kelly-Springfield Tire Co.*, supra, a bill for statutory receivers was likewise dismissed. The following net losses from operations were shown (in addition to an operating profit for 1925 and 1927 of $1,452,577 and $357,741, respectively):

Losses,

June 1930 (6 mos.)	$587,610.00
1929	$1,346,417.90
1928	$2,490,513.00
1926	$3,439,800.00
1924	$1,525,749.00
1923	$1,166,284.34
Net operating loss Jan. 1, 1923 to June 30, 1930	$8,746,055.00

See also: *Kron* v. *Trenton Automotive Collateral Co.*, 96 N. J. Eq. 162.

The figures of the respondent's witness, Markel, further support our contention that this was not a proper case for judicial interference. His figures show a progressive diminution in the corporation's deficit as follows:

August 31, 1928, deficit	$780,256.25
(S. of C., p. 373) reduced on December 31, 1929, to	728,484.63
(S. of S., p. 393) reduced on January 31, 1929, to	708,878.04
(S. of C., p. 401) reduced on July 29, 1929, to	688,854.95
(S. of C., p. 388).	

Thus a decrease is shown in the company's deficit at the end of 11 months of about $92,000.

In the same way an analysis of the losses sustained by the company reveals a progressive diminution:

A. *According to complainant's figures.*

1. August, 1927 to August 31, 1928 (operating loss) (S. of C., p. 181)	$332,522.53
2. September 1, 1928 to July 25, 1929 (operating loss) (S. of C., p. 208)	23,000.00

B. *According to defendant's figures.*

1. August, 1927 to August 31, 1928 (operating loss)	$332,522.53
2. September 1, 1928 to July 25, 1929 (operating *profit*)	44,000.00

The above figures establish the similarity between the instant case and *Fox* v. *Pathe Exchange,* supra; *Kelly* v. *Kelly Springfield Tire Co.,* supra; and *Kron* v. *Trenton Automotive Collateral Co.,* supra. Under these decisions, the bill of complaint should have been dismissed.

3. The alleged depreciation in the value of appellant's assets did not constitute a "loss" under the statute.

The assets of the defendant company were evaluated by the complainant's accountant at a figure almost $4,000,000 less than the amount at which those assets were evaluated before the hearing. The contrasting figures were as follows:

	As Per Company's Books	As Allowed by Respondent's Accountant
Cash on hand	$175,048.99	$175,048.99
Securities	4,335,891.67	1,885,627.00
Deposits	50,000.00	50,000.00
Call loans	75,000.00	75,000.00
Note of Harry H. Weinberger	2,300,000.00	1,000,000.00
Subscription notes receivable	17,375.00	17,375.00
Notes receivable ..	6,750.00	6,750.00
Accounts receivable	47,116.25	22,387.50
Installment subscriptions receivable	36,094.53	36,094.53
Furniture and fixtures	5,012.98	5,012.98
Prepaid Insurance	327.00	327.00
Organization Expense	157,017.06	.....
	$7,205,633.48	$3,273,623.00

(S. of C., p. 388.)

The difference between the company's books and the accountant's report is $3,932,010.48, explained chiefly by:

(a) Alleged depreciation in securities;

(b) Alleged depreciation of note of Harry H. Weinberger;

(c) Elimination in toto of the item of organization expense.

(a) As to depreciation in the value of securities.

The nature of defendant's business indicates that it owned two classes of securities:

> Securities which it held for the purpose of permanent investment and control;
>
> Securities which it held temporarily, for resale, at a profit.

In a holding company, it is well settled on both legal and accounting principles, that:

Securities which are owned as permanent investments should be carried at cost, regardless of fluctuations in market value.

Securities which are held temporarily, should be carried in inventory, at market value.

So, where a corporation purchases securities outright for investment, such securities, under proper accounting principles should be carried on the books at cost; annual depreciation in market value should never be written off.

Mr. Reiter (who is both a lawyer and an accountant), in his book entitled "Profits, Dividends and The Law," (1926), states at page 178:

> "In examining a balance sheet and profit and loss statement, to determine whether a distributable profit has been earned, both the directors and the stockholders of a corporation should be familiar with the rules for the valuation of investment.
>
> As an accounting proposition, the following rules seem generally accepted:
>
> '1: Permanent investments in the capital stock of other companies should be carried at cost;

> 2: Temporary investments in the capital stock of other companies should be carried at a fair market value on the date of the balance sheet, irrespective of cost.' "

Similary, Prof. Eggleston, in his work on "Modern Accounting Theory and Practice" (1930), (Vol. 1, p. 195), states:

> "It makes a difference whether one is a trader, dealer or investor. In general, it may be stated that a dealer may employ the so-called inventory method in valuing securities on hand at the close of an accounting period. However, an investor should carry his stocks and bonds at cost with a column on the investment schedule showing market values for the purpose of comparison."

The defendant company owned the following securities acquired prior to September, 1928:

No. of Shares		Carried at
30,210	Hobart Service Trust Co...	$2,478,079.19
2,564	Lebanon National Bank of New York	786,170.00
1,150	Perth Amboy National Bank	287,500.00
658	Hamilton Trust Company, Paterson, N. J.	248,200.00
1,130	Equitable Title and Mortgage	180,200.00

(S. of C., p. 389).

Under correct accounting principles, these stocks should have been carried at their original cost, inasmuch as they were acquired for permanent in-

vestment. Respondent's accountant, in violation of these principles, made the following arbitrary reductions: :

The Equitable Title & Mortgage Guaranty Co. item from $180,200.00 to $113,000.00;
The Hobart Service Trust Co. item from $2,478,079.19 to $604,200.00;
The Perth Amboy National Bank item from $287,500.00 to $180,550.00;
The Hamilton Trust Company item from $248,200.00 to $210,560.00;
The Lebanon National Bank item from $786,170.00 to $487,160.00.

(S. of C., p. 389).

As to the Equitable Title & Mortgage Guaranty Co., the accountant's report discloses no market available for determining the value of its stock and a reduction to par was made without an audit of the company, so that we have a wholly unjustified reduction of $67,200.00, in the value of this asset (S. of C., p. 389).

As to the Hobart Service Trust Co., the accountant's figure of $604,200.00 was based upon a resolution of the Board of Directors to sell said stock at $20.00 per share, passed on July 24, 1929, after the bank was closed (S. of C., p. 50). No audit was made to determine the book value of the stock. No experts were consulted to determine whether the bank should be reopened and assets of the appellant used for the purpose of rehabilitating the bank. (That this was feasible and should have been done, see Receiver's comment on pp. 122 ff. of State of Case.) This sum of $604,200.00 was clearly an arbitrary reduction wholly unrelated to value or accounting principles.

The principle that securities purchased for investment should be carried at cost is well established in the law of income tax. Thus, in *Edward* v. *New York Life Insurance Co.*, 271 U. S. 109 (1925), the insurance company purchased bonds at a premium over their market value. The bonds had many years within which to mature. To amortize these premiums, the company set up an annual reserve fund and claimed that additions to this fund should be deducted from the gross receipts in computing the income of the insurance company for the year. The U. S. Supreme Court refused to allow this deduction. Mr. Justice McReynolds said, at page 116:

> "Unless the addition amounted to a loss 'actually sustained within the year' no deduction could be made therefor."

Obviously, no actual ascertainable loss had occurred. The result of the venture coud not be known until the securties were either sold or paid off.

Similarly, in the instant case, so long as the company's stockholdings in the Hobart Service Trust Co., remained unsold, the defendant sustained no loss, as a matter of law. The stock was held for investment, and for all that appeared at the hearing, the bank, which was not insolvent, might have reopened and continued its business successfully, and the defendant company might eventually have sold its stockholdings in the bank at a profit. But until an actual sale, no loss could be deducted from the company's profit and loss statement.

In *Van Dyke* v. *Milwaukee*, 159 Wisc. 460 (rehearing denied 159 Wisc. 469), the income tax statute provided that, "Loss during the year not com-

pensated for by insurance or otherwise," might be deducted from annual profits. The Court held that depreciation in the market value of stocks owned by the taxpayer and not sold by him during the fiscal year did not constitute a loss and could not be deducted in computing the income tax.

In *Park* v. *Grant Locomotive Works*, 40 N. J. Eq. 114, the Court said, at page 121:

> "The words 'net profits' define themselves. They mean what shall remain, as the clear gain of any business venture, after deducting the capital invested in the business, the expenses incurred in its conduct, and the losses sustained in its prosecution. If, as in this case, merchandise is sold and securities payable at a future day are taken in payment, it is entirely proper—nay, if accuracy is desired, it is indispensable—that in making a statement of the condition of the business, the securities should be put down as part of its assets, and they must, as a general rule, if the statement shows that profits have been made, represent the profits either wholly or in part. And if, subsequently, in attempting to collect them, losses are sustained or expenses incurred, the sum shown as profits will be reduced just to the extent of such loss or expense."

Under the holding in the *Park* case, supra, it seems clear that securities held by a corporation must be evaluated at their cost price until they are actually disposed of and the loss, if any, is liquidated.

The same rule of law applies to the other arbitrary reductions, made by respondent's accountant in valuing the Lebanon National Bank stock;

the Perth Amboy National Bank stock; and the Hamilton Trust Co. stock.

It should also be remembered, as we have shown above, that the New Jersey Bankers Securities Co. paid nothing for the shares of the Hobart Trust Co. except its own stock of no par value. Hence the alleged depreciation in the market value of the Hobart stock can, on no theory, be deducted as an operating loss.

The fact that during the receivers' administration any of defendant's securities were sold for less than the value stated in defendant's books, does not aid the decree of August 8, 1929, which must stand or fall upon the circumstances existing when it was made. Prices realized at receivers' sales are notoriously unrelated to actual values. A striking example is the reduction over night of an offer for the Hobart stock from $20.00 to $10.00 per share (S. of C., p. 118). For the purpose of liquidating the company its securities were sold as quickly as possible, and under such conditions, they could not be expected to realize their fair value. As the Court said in *Cook* v. *East Trenton Pottery Co.*, 53 N. J. Eq. 29:

> "All experience establishes the fact that such assets greatly depreciate when their value comes to be ascertained at the block of the auctioneer."

(b) As to depreciation in the value of Weinberger's note.

A further item written off by the complainant's accountant in his report of July 29, 1929, was the note of Harry H. Weinberger for $2,300,000, marked down to $1,000,000. Under the holding in the *Park* case, supra, for the purpose of comput-

ing profit and loss of the company that note should be carried at $2,300,000, until it becomes due. Since it was not due when the bill was filed and will not become due until 1931, the company has sustained no loss thereon.

Furthermore, the accountant's own statement reveals that he had no basis for writing off this note to $1,000,000. For example:

(1) In computing the value of the note, the accountant admitted that he had omitted from his computations an item of collateral securing payment consisting of 9 bonds of $50,000 each totaling $450,000 (S. of C., p. 222).

(2) Complainant's accountant computed the value of 188,034 shares of stock of the New Jersey Bankers Securities Co. which it also held as security for the payment of the note at $680,000, or approximately $3.62 per share (S. of C., p. 221). As a matter of fact, according to the accountant's own statement, the assets of the defendant company on July 29, 1929, were worth $3,273,623, (S. of C., p. 388). There are approximately 648,000 shares outstanding. This would make the shares worth approximately $5.00 each instead of $3.62. The difference would increase the collateral held by the defendant by an additional $260,000.00.

It should also be noted that the receivers' report of November, 1929, carries this note at $2,300,000, and not at the alleged depreciated figure (S. of C., p. 644).

(c) As to organization expenses.

The accountant for complainant wrote off organization expenses of $157,017.06 (S. of C., p.

388). Organization expenses are always regarded as a capital item, and part of the capital assets, and ought never to be written off, at least not during the first five years of operation. The reason is apparent. It costs money to build up a corporation with 10,000 stockholders. Every company must pay the expense incident to its organization and the sale of its stock which properly includes attorneys' fees, printing and advertising bills and commissions for the sale of stock.

Conyngton, in his book on Corporation Procedure (1927), states at page 503:

> "At the same time, if the expenses of organization amount to more than, say, $500, it is hardly just to charge the entire amount to Profit and Loss at any one time. Such expenditures are essential to the creation of a corporate business, and the first year receives no more benefit from them than the fifth, sixth, or any other. It would therefore seem more equitable, so far as the statistical feature of bookkeeping is concerned, to write such costs off over a period of years.
>
> "Theoretically this period should be the entire life of the company, but in order to get rid of an undesirable asset and at the same time not overburden the Profit and Loss account of any one year, the management usually elects to charge the organization expenses off over a comparatively short period for this purpose, in which case one-fifth of the total amount should be charged off each year."

In a note in 7 Harvard Business Reports, page 46, the author urges the permanent capitalization of organization expenses, and that they never be written off. This likewise is the procedure in in-

come tax cases where it is held that organization expenses may not be deducted as a loss for the current year.

Thus, in the appeal of *First National Bank of St. Louis,* 3 B. T. A. 807 (1919), where three banks merged, there was an expense item of $30,000 for lawyers' fees and overtime to employees. The consolidated bank charged this item to expense and deducted it from its income tax. The Board of Tax Appeals held that it was an organization and capital expense, not an ordinary operating expense and that it could not be deducted in computing income tax.

Mr. Conyngton in his "Corporation Procedure," supra, says (p. 503):

> "Federal income tax regulations, however, do not allow the deduction in determining the amount of taxable net income of certain expenses of organization, including attorneys' and accountants' charges, incorporating expenses and fees, promoters' services, underwriting expenses, etc. For this reason, while invested capital was a factor in determining the amount of profits taxes it was wise to carry the organization expenses permanently on the books as an intangible asset."

Accordingly, it is clear that the organization expense of over $157,000 must be regarded as part of the capital assets of the defendant company, and cannot be deducted as a loss.

The conclusion, in our opinion, is inevitable; that the bias and prejudice of the respondent's accountants were manifest throughout their entire examination. Sound fundamentals were disregarded in the calculations which made up their fig-

ures. Axiomatic rules were ignored, in order to minimize the value of the assets of the company.

A typical example of the bias of respondent's accountants, is the following testimony of Braverman:

> Taking the last four months' expenses as a basis, and assuming that those expenses were normal and would remain the same for a year, the expenses would be approximately $121,-500" (S. of C., p. 180).

This statement was made on the basis of expenses of over $40,000 for the four months' period just prior to the receivership. Of this amount $18,-604 was for legal fees, (S. of C., p. 208-209); $8,000 was for a contingency reserve—not an expense at all; and $7,738 was for non-recurrent transfer fees (S. of C., pp. 207-209). If these charges had been deducted, as they should have been, operating expenses would have been shown not to exceed $40,-000 for the entire year. But respondent's witness assumed "that those expenses were normal," multiplied the entire lot by three and upon such a basis prognosticated that the expense for the year would be $121,500!

Yet, despite the mathematical legerdemain indulged in by respondent's accountants, the picture they were finally forced to concede was Exhibit C-5, showing assets of $3,273,623.00 and total liabilities of $9,588.60, the cash in bank alone being almost thirty times the amount of the liabilities (S. of C., p. 388).

Moreover, the Court below erred in receiving evidence of the value of defendant's assets based upon newspaper quotations and other hearsay evidence. Schedule "A-1" of Exhibit C-5 (S. of C., p. 389), reveals that the depreciation in most in-

stances was arrived at either by reference to newspaper quotations or quotations furnished by brokers. See also Braverman's testimony, S. of C., 195-196.

In *Horst Co.* v. *Breidt City Brewery Co.,* 94 N. J. L., 230, it was held:

> "The weight of authority is to the effect that a price current list, published in a newspaper, is not competent evidence of market value without proof as to the source from which the information therein was obtained, or whether the quotation of prices were from actual sales or otherwise. The credit to be given the paper must depend upon some such extrinsic proof; it cannot be determined by the publication itself (*Whelan* v. *Lynch,* 60 N. Y. 469). The mere fact of publication is not enough. This publication was properly rejected as a piece of evidence" (At page 233).

See also

> *Crowley* v. *E. Homan Co.,* 3 N. J. Misc. R., 968.

Summary as to Complainant's Proof.

1. Complainant wholly failed to show that the business of the defendant company could not be conducted "with safety to the public and advantage to the stockholders."

2. Complainant failed to show that appellant's business was being conducted at a loss within the meaning of the statute. The proof offered establish that for the seven months from September 1, 1928, to March 31, 1929, the company showed a profit from operations of $13,984.83; that this

profit was arrived at after deducting extraordinary and non-recurrent expenses; that had these extraordinary and non-recurrent expenses not been deducted as operating losses, the company would have shown a profit on its operations from September 1, 1928, to July 25, 1929, of $44,000; and that in addition to that profit there was realized a profit of $119,661 for forfeitures of subscriptions to the capital stock of the company. Assuming, however, without admitting that the extraordinary and non-recurrent items should have been included among the operating expenses, the entire net operating loss for the period from September 1, 1928, to July 25, 1929, was $23,000 as contrasted with a net operating loss for the period from August, 1927 to August, 1928 of $332,522. The loss, on complainant's own figures, is reduced during the second year to about one-twelfth of the loss during the first year. The deficit was decreased by $92,000. These facts should have brought the case within the purview of *Fox* v. *Pathe Exchange* and *Kelly* v. *Kelly Springfield Tire Co.,* supra.

Moreover, an alleged operating loss of $23,000 for the seven months' period prior to the filing of the bill, when compared with assets aggregating more than $3,000,000, (on complainant's figures), would not appear to be "a great loss" within the meaning of the statute.

3. Complainant's proof as to the alleged shrinkage in the market value of securities held by defendant is not a loss within the meaning of the statute, since no loss had actually been suffered when the bill was filed. Moreover, the proofs upon which the said depreciation was calculated, were speculative, remote and hearsay and should not have been admitted. The writing off of the Wein-

berger note and the organization expense was also improper and erroneous.

4. Complainant's proof as to losses sustained by the company prior to September 1, 1928, should have been excluded because they had already been the subject matter of the Mayer suit, which had been adjudicated and settled in September, 1928 (See Point V, infra).

5. Complainant failed to show that the defendant company conducted its business "greatly prejudicial to the interest of its creditors". No prejudice to the creditors of any kind, either present or potential was shown. In none of the court's several opinions was there any finding that interests of creditors were being prejudiced.

POINT III.

To warrant judicial interference in the affairs of a corporation the violation of the statute must be manifest and reasonably apparent.

The law is settled that to warrant the appointment of a receiver under the statute, the proofs must be strong and urgent. Probabilities are not sufficient—the court must be satisfied to a certainty that the statutory prerequisites are present. The law in this connection is stated by Judge White in *Greenbaum* v. *Lafayette & Broad Realty Corp.*, 96 N. J. Eq., 317, at page 320:

> "It may be that a learned Vice-Chancellor, as an individual, may well and with good cause seriously doubt his own ability, if placed in charge of this corporation's business, to so

> conduct it as to successfully pay the principal installments on the mortgages against the corporation's real estate as they should mature year by year in the future, but the statutes have not made such a doubt a sufficient excuse for the trying out of the experiment through a receiver. There are very few corporations which could successfully withstand such a test."

Similarly, the Court *in re: Suburban Hotel Co.*, L. R., 2 Ch. 727, said:

> "But what I am prepared to hold is this, that this court, and the windup process of the court, cannot be used and ought not to be used as the means of evoking a judicial decision as to the probable success or non-success of a company as a commercial speculation."

The courts in other states have held that before a court can wind up a corporation, it must be satisfied "to a moral certainty" that the objects for which the corporation has been formed are impossible of attainment.

In *Phinizy* v. *Anniston City Land Co.* (Ala. 1916), 71 So. 469, the court refused to appoint a receiver and to wind up a corporation on the ground that its objects had become impossible of attainment, and held that it should not be done in any case unless and until it had been demonstrated beyond a "moral certainty" that such is the fact.

In *Radford West End Land Co.* v. *Cowan* (Va. 1903), 44 S. E. 753, the lower court granted plaintiff's prayer to wind up the defendant corporation. The court had found that there were no debts, mismanagement or waste, but that the defendant corporation owned lots which had depreciated in

value. On appeal the ruling of the lower court was reversed and the complaint dismissed. The Appellate Court said:

> "As to the future of the corporation, the evidence is conflicting. Some witnesses express the hope and give their reasons for the opinion they entertain that there will be a great improvement in the value of the land retained by the company, and that with prudent management, the stockholders may reasonably expect to be reimbursed a considerable portion of the assessments which they have been required to pay. We cannot say that the purpose for which the corporation was organized failed * * *. Whether it will be for the benefit of the stockholders that the company should continue in business is of course uncertain; but as we have seen upon that point the evidence leaves the stockholders a reasonable expectation that the present condition will improve."

In *Miller* v. *Herzbberg* (Ala. 1919), 81 S. 555, the lower court appointed a receiver and ordered the sale of the assets of the corporation. The defendant corporation was engaged in the real estate business and had purchased lots during a boom period. The boom collapsed and with it the value of defendant's property. On appeal the judgment below was reversed and the bill dismissed. The Appellate Court said:

> "The fact that the promoters of this corporation centered their united efforts upon the development of a particular tract of land for building lots, did not make the successful pursuit of that enterprise the sine qua non of continued corporate existence, nor did the fact

that they planned and expected to market the bulk of their lots before the exuberance of "boom" times had subsided, make the failure so to do 'a failure of the object of the corporation' in any legal or business sense. * * * Selling real estate which has been bought and is held for profit is not like selling merchandise; it is not necessarily either continuous or contemporaneous. It is not expected that it will be thrown upon a dull market at a sacrifice, or rather that it will be held until an active demand for it has arisen or can be created, whether in a few months or in many years. * * *

"The bill of complaint does not show that conditions are now unfavorable or will be unfavorable in the future for a profitable resumption of the corporate scheme of platting and selling lots. It may very well be that the country at large and the City of Gadsden in particular are on the eve of such industrial development and commercial prosperity as will permit and promote the speedy realization of this particular scheme."

In *Benedict* v. *Columbus Construction Co.*, 49 N. J. Eq., at page 43, the Court said:

"Thus, in this case, is exhibited a status which utterly fails to make such a case as the complainants should present to entitle them to the relief they seek. The burden is upon them to clearly satisfy me that the real object to which the operations of the Columbus Construction Company are directed is unattainable. Failing in this, either because of unsettled law or because of uncertainty as to the

> facts upon which the irreparability of apprehended injury is predicated, they have no right to a preliminary injunction. Upon an uncertain, conjectural case, this court will not stop an enterprise upon which more than a million and a half of dollars have been expended, and which is rapidly reaching completion, especially when more than two-thirds of those who have embarked their money in it protest that the action desired of the court will work ruin to them."

Mr. Justice Minturn stated, in the case of *Greenbaum* v. *Lafayette, etc.,* supra, at page 319:

> "Our Corporation Act, operating as a variation from the common law, is intended to encourage honest consolidation of effort, and not to retard it; and our cases illustrative of this principle have consistently manifested a repugnancy to judicial intervention in corporate business affairs, except where the violation of the provisions of the statute is manifest and reasonably apparent."

Can it be said that a violation of the statute is "manifest and reasonably apparent" in the instant case and that the jurisdictional facts have been established to a "moral certainty"?

The defendant company is not an industrial concern manufacturing obsolete articles with machinery suitable for no other purpose, and so, a hopeless venture. It is not operating a mine the contents of which have been entirely depleted, and in which engineers report that there are no additional deposits. It is or was engaged in the business of holding securities. The conceded market value of those securities was over $3,000,000 on

July 29, 1929. The liabilities were less than $10,000. Can it be said "to a moral certainty" that such a company cannot be conducted with safety to the public and advantage to its stockholders?

In the course of the discussion above, we have pointed out that complainant did not attempt to prove, and could not prove that the defendant's business was being conducted in a manner greatly prejudicial to the interest of its creditors. The learned Vice-Chancellor found no proof on this point in the record, and accordingly made no finding that defendant's business was being conducted "greatly prejudicial to the interest of its creditors."

The finding of fact contained in the order of August 8, 1929 (S. of C., pp. 53-54), is as follows:

> "And it appearing to the court and the court finding the fact to be that the defendant's business has been and is being conducted at a great loss and greatly prejudicial to the interests of its stockholders, so that its business cannot be conducted with safety to the public and advantage to the stockholders."

Nothing is stated as to creditors.

So far as stockholders are concerned, it should be remembered that no other stockholder of the 15,000 referred to in the Bill of Complaint, has joined with Bernstein or intervened in this suit. On the contrary by overwhelming majority the stockholders have manifested their preference that this corporation continue to function.

POINT IV.

The amendment of 1912 to Section 65 of the Corporation Act is unconstitutional, under the State and Federal Constitutions.

The amendment of 1912 to Section 65 of the Corporation Act is unconstitutional, under the State and Federal Constitutions, in that:

1. The meaning of the Amendment is indefinite, vague and uncertain, with regard to the following terms:

(a) "Its business has been and is being conducted at a great loss";

(b) "Greatly prejudicial to the interests of its creditors and stockholders";

(c) "So that its business cannot be conducted with safety to the public and advantage to the stockholders."

2. It authorizes the confiscation and distribution of vested property rights of stockholders of a solvent corporation without due notice to them.

3. It permits the winding up and dissolution of a solvent corporation, against the will of the stockholders and directors, when the rights of creditors are not involved.

4. It permits the winding up of a solvent corporation at the suit of a minority stockholder or creditor.

5. It is in direct conflict with the certificate of incorporation and charter granted by the State of New Jersey, and takes away the property rights of stockholders without due process of law.

POINT V.

The decree of August 9, 1929, and the proceedings taken thereunder were not within the general equity jurisdiction of the Court of Chancery.

We have thus far predicated our argument upon the assumption that the decree of August 8, 1929, was in its essence a decree framed under the statute. Equity regards the substance rather than the form. From first to last the proceedings were brought under the amendment of 1912. Considering the powers vested in the receivers, it is difficult to conceive how the designation of them as equity receivers changes their essential nature. As we have shown, the appointment of statutory receivers was unjustified in law and in fact.

Assuming now that the receivers were appointed, not by virtue of the statute, but in the exercise of the general equity jurisdiction of the Court of Chancery, we respectfully submit that the decree and all subsequent proceedings thereunder were erroneous and defective in several respects:

(1) The appointment of a receiver after a summary hearing is warranted only by statute. In the instant case, proper procedure under normal equity practice would have required that upon the filing of the bill of complaint, complainant cause a writ of subpoena to issue directing the defendants to answer the allegations of the bill. An alternative prayer was contained in the bill that in the event complainant should be denied the statutory relief sought, a writ of subpoena might issue (S. of C., p. 34). No writ of subpoena ever issued. Instead a summary hearing was held upon the basis of

which equity receivers were appointed. This was erroneous inasmuch as the appointment of receivers after a summary hearing is a purely statutory innovation and only statutory receivers could result from such a hearing. *Pierce* v. *Old Dominion Copper Mining & Smelting Company,* 67 N. J. Eq. 399.

(2) Chancery Rule 130, realting to general references to Vice-Chancellors, provides that there may be brought before any Vice-Chancellor, without special order of reference:

> "5. Applications in any cause or proceedings for orders or decrees excepting decrees pro confesso and final decrees * * *."

No special order of reference was ever made by the Chancellor in this action. Hence no jurisdiction existed in the Vice-Chancellor to make the decree of August 8, 1929. That said decree is a final decree within the Chancery Rule above quoted has been adjudicated by this Court in connection with a motion made preliminary to the argument of this appeal. The motion was made by the respondent to dismiss the appeal upon several grounds, among which was the fact that the appeal had not been taken from the decree within the time limited for taking appeals from interlocutory orders—and the motion was denied.

(3) No notice was ever given to stockholders and creditors as required by Chancery Rule 111b. The rule provides that if an equity receiver is appointed for a corporation an order addressed to the stockholders and creditors of the corporation shall be signed requiring them to show cause why the receiver and receivership should not be con-

tinued and made permanent. This was not done. Moreover in *Hitchkock* v. *American Pipe and Construction Co.,* 89 N. J. Eq. 440, it was held that even in insolvency proceedings the judicial policy of this State requires that before any act is done which will affect the interests of creditors and stockholders, they should have notice. The policy adverted to applies even more appropriately where the corporation involved is solvent.

(4) The proceedings were further defective, if brought under the general equity powers of the Court, in that there was no allegation in the bill of complaint or proof that demand had been made on the Board of Directors to remedy the alleged defective conditions. It is well established that a condition precedent to a stockholder's right to institute a class suit or representative action is the exhaustion of all means within his reach to obtain from the corporation itself the redress of his grievances. 14 C. J. 931, and cases cited. The stockholder must show either that a demand upon the Board of Directors or other managing body to have an action prosecuted in the name of the corporation to redress the grievances complained of, has been made and refused or that the circumstances are such that a demand would be futile and unavailing. 14 C. J. 931, 932. When the present bill was filed several directors were in office. The proofs did not show that a demand made upon them to conduct an election to fill the vacancies created by the retirement of several directors, would have been unavailing. Hence a condition precedent to complainant's right to file a bill for the appointment of an equity receiver was unfulfilled.

(5) It is also well settled that where the directors are charged with breach of trust, they must be made parties defendant to a proceeding for relief. The omission renders the bill of complaint fatally defective. 14 C. J. 941; *Kean* v. *Johnson,* 9 N. J. Eq. 401 (424). No fraud or mismanagement on the part of the directors was proven at the summary hearing warranting the appointment of equity receivers. In the final analysis the evidence adduced against the directors in office when the appeal was filed, resolved itself down to their failure to exercise adequate supervision over the affairs of the Hobart Service Trust Co. This can hardly be called the kind of gross fraud or mismanagement generally held to be the basis for the appointment of equity receivers.

(6) The decree is also erroneous in so far as it vests in the equity receivers title to the assets of the company and the power to dispose of them and wind up the company.

In *Morse* v. *Metropolitan Steamship Co.,* 88 N. J. Eq. 325, this Court held that unless the order appointing receivers is made under Section 68 of the Corporation Act, which vests title in the receivers, an order purporting to invest title in receivers is erroneous. The Court expressly held that the provisions of Section 68 apply only to receivers of insolvent corporations and that in no case may a corporation be divested of title to its assets where it is solvent.

"The original and primary jurisdiction of the Chancellor's court in receivership cases was in personam merely (citing *Booth* v. *Clark,* 58 U. S. 321, 331; *Durand* v. *Howard & Co.,* 216 Fed. 585, 591). A receiver has no title to the fund, but merely acts as the arm of the court." 1 Clark on Receivers, pages 459, 460.

The power of dissolution is likewise beyond the general equity powers of the Court of Chancery. *Atlantic Trust Company* v. *Consolidated Electric Storage Co.,* 49 N. J. Eq. 402.

(7) Finally, the decree was predicated upon an order to show cause dated July 25, 1929, requiring the defendant company and its stockholders and creditors to show cause why a receiver should not be appointed "according to the Statute in such case made and provided" (S. of C., p. 16). The stockholders and creditors were not brought into Court at all on the return of the order to show cause; the defendant company was brought in to show cause why a statutory receiver should not be appointed. The appointment of an equity receiver under these circumstances was plainly erroneous.

POINT VI.

The Decree of August 8, 1929, is void because no notice was given to stockholders of the proceedings, and they were deprived of their property without due process of law.

On July 25, 1929, the Court made an order to show cause why statutory receivers should not be appointed. The order provided that a copy "be served upon the defendant, by service upon any Vice-President of the defendant company or upon its statutory agent within one day hereof" (S. of C., p. 17). The order failed to provide for notice to stockholders, as required under Rule 111b of the Rules of the Court of Chancery.

In *Shaw* v. *Standard Piano Co.,* 87 N. J. Eq. 350, the Court of Errors and Appeals held that Section 65 of the Corporation Act, in so far as it au-

thorized the appointment of a receiver, without notice to the defendant corporation, is unconstitutional, and that the appointment of a receiver without notice to the defendant is the taking of property without due process of law. The question whether notice to stockholders is necessary, was not before the Court in that case, but it is respectfully submitted that notice to stockholders is imperative under Rule 111b and under the due process provisions.

In *Furrer* v. *Nebraska Building & Investment Co.,* 108 Neb. 698 (1922) 43 A. L. R. 225, at p. 233, the following appears:

> "It is the law in this state, and every application for receiver must give notice of the time and place of hearing, and in addition, the names of the proposed sureties for applicants, and the name of the proposed receiver. Along this line let it be known and let it be understood that we are intending to follow the provisions of the statute, and we call attention to the fact that Section 7811, Rev. Stat. 1913, must be followed in this proceeding. That section of the statute in this connection we say is imperative and mandatory, and so important that the legislature designed that, in a proceeding of this kind, where the law steps in and arbitrarily sells one's property, it is incumbent upon the law to do this only when the special regulatory steps have been taken as provided by statute. * * * It must be conceded, then, that a party cannot be divested of his rights and of his property unless he had previous to this been properly brought into court. * * *
>
> "It appears of records herein that the receiver's appointment must be void as to no-

tice. It is plain that, in order to give the court complete jurisdiction, it is necessary to give notice to all parties desired to be brought into court and have their interests adjudged. The statute actually contemplates notice to those who have an interest in the property. In the drastic appointment of a receiver which results in the sale and distribution through the court of the property of the stockholders, then, in that case, it can only be thought of when these stockholders had an opportunity to be heard. In other words, the stockholders are entitled to their day in court. They are vitally interested, for property rights are being bartered away unless it can be shown that they are brought into court by virtue of statutory notice. This application of a receiver is the last and most drastic relief granted by the statute, and it is only granted when all other proceedings have been exhausted or have failed. We know nowhere of a statute intended to circumscribe, check, limit and control the powers of the court and give proper protection to a litigant more thoroughly than the rule enacted by the Legislature in this proceeding, and in no statute is it more incumbent upon the trial court to literally follow a statute."

At page 236:

"The petition shows on its face that the managing officers of the corporation were not properly representing the stockholders, but were using corporate power and corporate property for individual benefits, to the injury of other stockholders. Plaintiffs, while invoking the extraordinary powers of a court of

equity to seize, hold and sell corporate property of which the stockholders generally were beneficial owners, on the ground, among others, that the officers in control were acting for themselves individually at the expense of those whom they wronged, did not give notice to many stockholders whose confidence has been thus abused. The respect in which plaintiffs did not give lawful notice of their application for the appointment of a receiver, and of their purpose to wind up its corporate affairs, was the failure to notify stockholders generally of the proceeding, the circumstances as shown by the petition being such that notice to derelict officers was not notice to stockholders. The latter had a right to notice of the application, to inquire into the conditions of the corporation, to oppose the appointment of a receiver, to make objections to the person suggested for receiver or appointed as such, to suggest corporate action to remove unworthy officers of the corporation and select new ones to take charge for the purpose of paying corporate debts and preserving corporate property and corporate business. The appointment, without notice, of even a temporary receiver to conserve corporate property until such time as real conditions could be disclosed to the court was, under the circumstances, an abuse of discretion and erroneous. Plaintiffs, as stockholders, had no right, without notice to other stockholders, to use the equity arm of the court to seize, hold and sell property common to all stockholders. Because the officers of a corporation abuse their powers and betray the confidence of their principals is no reason why those who own the property lose their voice in its control, their dominion and their

property rights. No set of stockholders without notice to the others can seize, hold and sell the latter's corporate property or use the judicial arm of the government for that purpose. Plaintiffs knew that the corporate officers did not properly represent the stockholders. Their petition so shows, and a receiver should not have been appointed without any notice except to the officers themselves. Smiley v. Sioux Beet Syrup Co., 71 Neb. 581, 99 N. W. 263, 101 N. W. 253; Vila v. Grand Island Electric Light Ice & Cold Storage Co., 68 Neb. 222, 63 L. R. A. 791, 110 Am. St. Rep. 400, 94 N. W. 136, 97 N. W. 613, 4 Ann. Cas. 59; Miller v. Kitchen, 73 Neb. 711, 103 N. W. 297."

In *Nottebaum* v. *Leckie,* 31 Fed. (2nd) p. 556, the U. S. Circuit Court of Appeals for this circuit, held the appointment of a receiver without notice was the taking of property without due process of law, and therefore illegal and void from the beginning.

In *Gallagher* v. *Asphalt Co. of America,* 67 N. J. Eq. 441, the Court said at page 446:

> "I never heard of a decree fixing the status of the corporation as one under disabilities, with reference to the exercise of its franchises being vacated without notice to all the stockholders and all the creditors of the corporation."

And further, at page 457:

> "In this case, if the conclusion had been that an order should be made appointing a receiver, the stockholders and creditors would have been brought into court on notice before any appointment would be made." * * *

It is noteworthy, that in all the foregoing cases, the courts were dealing with insolvent corporations. The rule that stockholders are entitled to notice applies with infinitely greater force when the corporation is concededly solvent. A stockholder has little or no interest in the assets of an insolvent corporation, because creditors have a prior claim. Yet the courts have consistently laid down the rule that notice to stockholders even of insolvent corporations is indispensable, and where such notice was omitted the proceedings were jurisdictionally defective and void ab initio.

In the instant case, where the assets of the defendant company are many times its liabilities, stockholders have a direct pecuniary interest and a vested property right to protect and any attempted disposition, or distribution of this property right, without notice would constitute a taking of property without due process of law, in direct violation of the Constitution of the United States and the Constitution of the State of New Jersey.

Clearly, therefore, the proceedings had in the instant case resulting in the order of August 8, 1929, and the proceedings had thereafter, were void ab initio as against all the stockholders of the defendant company, and should be reversed.

After the appeal from the decree of August 8, 1929, had been taken a new order to show cause dated April 29, 1930 was issued to all stockholders and creditors, directing them to show cause why a statutory receiver should not be appointed; and a new summary hearing was held in May, 1930; but if the original order to show cause of July 25, 1929, and the decree of August 8, 1929, were improper and void, it is respectfully submitted that a new order to show cause issued thereafter in this pro-

ceeding could not cure the irregularity and unconstitutionality of the proceedings.

Thus, the Circuit Court of Appeals for this Circuit held in *Nottebaum* v. *Leckie,* 31 Fed. (2nd) 556, that if proceedings were instituted without notice they were void and nugatory, and no subsequent order to show cause can cure and resuscitate them. At page 561 the Court said:

> "We stop to inquire, therefore, what subsequent act of the defendant has validated this unlawful procedure? What subsequent act of the defendant has breathed into the dead body the breath of life? By what legal alchemy has this transmutation been wrought? Does some vain attempt to undo the wrong so couple it with the proceeding as to make lawful that which before was wholly unlawful? Because some creditor or stockholder attempted, in obedience to the court's direction, to show cause why an illegal decree should not stand, does the denial of his right clothe such decree with the vesture of legality? Does the court's assumption to do what was forbidden by the Constitution and law of the land become a lawful exercise of power by reason of some act of commission or omission on the part of a creditor or stockholder? Most certainly not."
>
> * * * * * *
>
> "The court's original decree, illegal and void for want of notice and an opportunity to be heard, continued to be illegal and void. The status remained unchanged. No act had been done which could give it life, nor estop the defendant from asserting its validity."

Furthermore, as was held in *Pierce* v. *Old Dominion Mining,* supra, once a summary hearing is

concluded, the matter is res adjudicata, and nothing further can be done by the litigants except through an appeal. The power and jurisdiction of the Court of Chancery has been exercised when the hearing is closed. The hearing in this case was closed on August 2nd, 1929:

> "The Court: Do both sides rest?
>
> Mr. McGinnis: If your Honor please, after consultation here—
>
> The Court: Do you rest? Are you through?
>
> Mr. Corbin: I rest for the Company.
>
> Mr. McGinnis: Mr. Weinberger feels he would like to have an opportunity to cross-examine Mr. Jelin and Mr. Bernstein, whose affidavits are the sole affidavits attached to the bill instituted in the proceeding.
>
> The Court: We have gone beyond that point; we have gone to the summary proceeding. The matter was brought to my attention by the pleading. I will decide on the evidence before me" (S. of C., p. 322).

And again, at page 316:

> "Mr. Ruback: That is our case. We rest.
>
> The Court: How much is the property worth?
>
> Mr. Ruback: I expected to have proof but it is not available now. If your Honor will afford me a later opportunity—
>
> The Court: There won't be any later than this afternoon.
>
> Mr. Ruback: Then I will close my case."

And finally at page 323:

> "The Court: The testimony is closed."

The principles which we have discussed above, relative to the constitutional necessity of affording notice to stockholders before a receiver may be appointed apply a fortiori to a case where a court is asked to grant injunctive relief. We submit that, in the latter class of cases, there can be no rule suspended; notice is absolutely indispensable and must be strictly adhered to, both under principles of equity and under the United States and New Jersey Constitutions.

POINT VII.

The Court below erred in receiving and considering evidence relating to transactions preceding the dismissal of the bill of complaint in the suit of Fannie Mayer v. New Jersey Bankers Securities Co.

On June 20, 1928, a stockholder of the defendant company, one Fannie Mayer, filed a bill of complaint in the Court of Chancery, alleging that the defendant's business had been operated at a loss within the meaning of the statute, that the directors had mismanaged it and wasted its assets, and praying for the appointment of a statutory receiver and an injunction.

The grievances stated in said bill of complaint relating to losses sustained by the defendant company, were the following:

(1) The repurchase by the defendant company of 172,000 shares of its capital stock at an alleged loss of $347,000.

(2) Payment of a dividend of $100,000, alleged to have been unlawful.

(3) Other alleged acts of non-feasance and misfeasance by the directors.

The defendant company contested the Fannie Mayer suit. A settlement was affected and the bill of complaint was dismissed by final decree of the Court of Chancery dated September 25, 1928.

Appellant contends as a matter of law that when the Court dismissed the Fannie Mayer suit and denied the statutory relief therein prayed, it held that the grievances set forth in the bill did not warrant the invocation of the statutory power of the court. The decree of September 25, 1928, is therefore res adjudicata on the question that none of the acts of the board of directors of the defendant company up to September 25, 1928, were sufficient to warrant the appointment of a statutory receiver.

All the alleged losses set up in the Fannie Mayer bill of complaint and the matters at issue in that litigation were settled in the agreement executed by Harry H. Weinberger (Ex. C-10). By that agreement Harry H. Weinberger agreed to purchase 172,000 shares of the capital stock of the New Jersey Bankers Securities Co. and to make up for the alleged losses sustained by the company during the period that he was its president, by a cash payment of $200,000 and his personal note for $2,300,000 secured by collateral. The Court approved the settlement as did all the stockholders. The defendant company was made whole insofar as it had sustained any losses prior to September 25, 1928, when it received the note of Harry H. Weinberger and the cash payment of $200,000, with the approval of the stockholders, the creditors and the court.

The certificates of stock of Solomon Bernstein, marked in evidence (S. of C., p. 370), indicate that

he became a stockholder as of December 1, 1928. This date is subsequent to the settlement of the Fannie Mayer suit. In acquiring this stock, after the publicity of the Davis Investigation and the Fannie Mayer suit, complainant did so, with notice of the condition of the company's affairs, and in particular the settlement with Harry H. Weinberger.

The question presented at the hearing therefore was whether under all the circumstances which existed from the settlement to the filing of the bill of complaint on the 25th day of July, 1929, the new Board of Directors discharged its duties in a manner commensurate with the legal trust reposed in it; and the Court's inquiry therefore should have been limited to this period of time.

That this is the law is settled by the case of *Pierce* v. *Old Dominion Copper Mining & Smelting Company,* 67 N. J. Eq. 399:

> "Whatever may be the finding of the court upon the summary hearing, the matter which is then contested by the parties, the status of the corporation becomes res adjudicata by whatever decree or order the court may make. Both parties to the litigation have their day in court—their ample opportunity to present pleadings and proofs to sustain their respective contentions. If either is dissatisfied with the decision of the Court the remedy is an appeal to the Court of Errors and Appeals. The litigation in this court over the cause of action set forth in the petition or bill is ended" (At p. 412).

This doctrine was recently applied in *Farmer's Loan and Trust Co.* v. *Ringwood,* 144 A. 868 (1929), where a motion for a receiver was denied

on the ground that seven years before, a similar application had been denied.

The decree made on September 26, 1928, dismissing the Mayer bill of complaint, approving the Weinberger settlement, and awarding $80,000 in fees to the various solicitors, was a final adjudication which gave the corporation a new lease on life. The present bill of complaint contains an attempted rehash of the same grievances as were disposed of on September 26, 1928. There must be an end to litigation. If a directorate can be subject to the accusations chargeable to their predecessors in office, after an adjudication by a court of competent jurisdiction disposing of the grievances, it will be a difficult matter to obtain the services of men competent to direct and run the affairs of corporate enterprises in this State.

A director elected in September, 1928, had a right to assume:

That all complaints and grievances against the old Board had been settled;

That in assuming the office and responsibility of director he was privileged to use his best judgment in the administration of the affairs of the company in the light of the conditions which then existed;

That he was obliged to see that the business of the company was conducted in accordance with the law;

That it was the wish of the stockholders and the court to afford the new Board a reasonable opportunity to promulgate and formulate plans to carry on the business of the company as authorized by its certificate of incorporation, free from unnecessary annoyance and litigation.

The new directors applied themselves to the problems confronting them with such zeal and success

that the operations of the company netted considerable profit during their tenure. The State of Case reveals the following colloquy at page 239:

> "Mr. McGinnis: They made money while they were at it.
> The Court: The men made money?
> Mr. McGinnis: They made money.
> The Court: You mean the company?
> Mr. McGinnis: I mean the board of directors—through their efforts made money for the Corporation.
> The Court: Yes, they made money under the management of Mr. Jelin."

We can add the following to support this view:

(a) Deficit before new board came in, as of August 31, 1928, ...$780,256 (S. of C. p. 373).

(b) Deficit after new board came in September, 1928, as of July 25, 1929, ...$688,854 (S. of C. p. 388).

This saving of over $91,000 would appear to be a noteworthy achievement with every indication of promise for the future.

The Court in speaking of the new directors, said:

> "And they were a fine lot of men * * * Nothing but credit is to be given to the men who went on that board, and there is no criticism from the Court because they left" (S. of C., p. 318).

The new board inherited the stock of the Hobart Trust Company, the Lebanon Trust Company, the Weinberger note and other assets. Complainant points to shrinkage in the market value of these assets as a basis for relief, but overlooks the fact that the new directors inherited these assets, and were forced to hold them.

Thus, for example, the new directors succeeded to 30,210 shares of the Hobart Trust Co. This huge block of stock could not be sold, and the only sensible, businesslike thing to do was to keep the same, in the hope and expectation that its value would increase.

We next have the depreciation in the value of the Lebanon Bank stock. This likewise was an inheritance of the old regime which left behind the contract for the purchase of the stock. After its purchase, it could not be sold because the market value was lower than the cost (Exhibit C-12, S. of C., pp. 447 ff.).

The new directors likewise inherited the Weinberger note. This note had not matured, and could not be sued upon. It could not be sold at a fair price. The new directors had to keep this note in the company's treasury. Consequently, any alleged shrinkage in the value of this note cannot be charged against the new directors.

Considering the fact, therefore, that the new Board had a great part of its funds tied up in:

Hobart Service Trust Co....	$2,478,079.19
Lebanon National Bank....	786,170.00
Weinberger Note.....	2,300,000.00
Totalling	$5,564,249.19

its performance from September 1, 1928, to July 25, 1929, was more than creditable, and certainly

did not reflect any gross mismanagement warranting an injunction.

We respectfully submit that the court below erred in admitting, over objection, evidence relating to the defendant's business prior to September 1, 1928, because:

(1) The same evidence was considered and adjudicated in the Fannie Mayer suit. The dismissal of the bill in the latter case was res adjudicata as to all matters preceding September 25, 1928.

(2) The evidence related to matters which had been settled by agreement, approved by the court and all the stockholders.

(3) The new board can only be charged with acts of their own doing—not with inherited conditions.

POINT VIII.

The Court below committed error in the admission and exclusion of evidence at the summary hearing held in August, 1929.

It is further submitted that, in addition to the errors heretofore adverted to, the Court below committed the errors hereinafter set forth in the admission and exclusion of evidence at the summary hearing.

1. The Court excluded evidence intended to show that the Hobart Trust Co. was closed not because of any inherent fault in its financial structure but because of improper motives on the part of certain persons who had been attempting to purchase

it at a low figure (S. of C., pp. 99, 100, 105, 106). The evidence would have established that the closing of the bank was due to no fault of the defendant or its board of directors, but to matters over which they had no control. Inasmuch as the complainant predicated his right to relief to a large extent upon the fact that the bank had been closed and the defendant company had thereby suffered losses, the materiality of this error is apparent.

2. The Court refused to permit cross examination of the bank examiner as to the thoroughness, accuracy and reliability of his report (S. of C., pp. 147, 148, 150, 153, 160, 166, 170). It was material for defendant to show that the bank examiner had not been thorough and accurate in preparing his report and that, more precise and reliable information should have been offered, before any conclusion was reached as to the value of the shares of the Hobart Trust Co.

3. The Court permitted the accountant for the respondent to give a detailed history of the defendant company (S. of C., pp. 263-290). The accountant was never qualified as an expert on this subject and no proper foundation was laid for his testimony. Objection was made to the evidence but the same was overruled ant the following colloquy took place:

> "Mr. McGinnis: If your Honor please, may I object—
>
> The Court: You know the general history of this company as well as I do, and I cannot recognize it until it is on the record, and this history may now very profoundly affect the issue now involved.

> Mr. McGinnis: I am not rising to a technical question, but here is a gentleman giving us a mass of evidence composed of some personal knowledge, some theory and some hearsay.
>
> The Court: I will extract that which is theory, that which is hearsay, and retain that which will aid me. Proceed" (S. of C., p. 263).

The statement of the Court that it would extract the hearsay and retain that which would aid it, does not cure the error. The record does not and could not possibly disclose that which was retained and that which was rejected in the Court's mind. How may an appellate court know whether the lower court's decision was rested upon the legal or the improper evidence?

As the Court remarked, the history of the company "may now very profoundly affect the issue now involved." To permit hearsay and opinion testimony upon so vital a topic was erroneous. *Horton* v. *Horton,* 2 N. J. Misc. R. 683; *Horst Co.* v. *Breidt City Brewery Co.* 44 N. J. L. 230; *Crowley* v. *Homan Co.,* supra.

In *Horton* v. *Horton,* supra, Chancellor Walker said at page 686:

> "Besides the case in re Craven, supra, which holds that the rules of evidence which do not permit of leading questions, characterizations, hearsay and conclusions, and which require that facts only may be testified to by witnesses, leaving all inferences to be suggested by way of argument and to be decided by the court, apply as well to ex parte cases as to litigated ones, I sent a circular letter to the

special masters on April 5th, 1923, which is Appendix No. 2 of the Rules of 1923, page 112, in which I admonish them not to permit the taking of hearsay or other incompetent testimony; but, I regret to say, that neither the decision nor the letter is being complied with to the extent that I had hoped and expected."

The history of the defendant company was placed on the record not by competent legal proof but by a mass of hearsay and opinion testimony. The history of the company, to an extent, reflects its future. Since its future is the most important element in determining whether the company can conduct its business with safety to the public, etc., the admission of illegal evidence, upon which its future was prognosticated, was plainly erroneous.

4. The Court erred in refusing to permit counsel for the defendant company to examine one of the former directors, Mr. Armstrong (S. of C., pp. 320, 321). The testimony of Mr. Armstrong would have been helpful in depicting the company's activities and financial problems during the time that he was a director, approximately from September, 1928 to July, 1929. This evidence was pertinent and material to the issues involved.

5. The court erred in admitting evidence of the shrinkage in value of the company's securities since the same did not constitute an operating loss within the meaning of the statute (S. of C., pp. 175-178; 388).

6. The court erred in permitting respondent's accountant to give evidence of the value of defendant's securities based upon newspaper quotations or quotations furnished by brokers and further

erred in admitting Exhibit C-5 (S. of C., pp. 380-391), to which was annexed Schedule A-1 (S. of C., p. 389), wherein the value of defendant's securities was based upon newspaper quotations and quotations furnished by brokers. The said evidence was not admissible upon the ground that it was hearsay and no proper foundation was laid for the admission thereof.

Part 2. Appeal from Order of June 24, 1930.

POINT IX.

The order of June 24, 1930, denying restoration of the Company's property, was erroneous and unjustified.

Under this point, we shall assume for the purpose of argument that the decree of August 8, 1929, was justified whether it be regarded as appointing statutory or equity receivers. We shall now endeavor to prove that the Court below should have granted defendant's petition for the restoration of its property and the termination of the receivership.

On July 25th, 1929, when the bill of complaint was filed and in August, 1929, when the summary hearing was conducted, the condition of the defendant company was alleged to be as follows:

> (1) It owned three-quarters of the capital stock of the Hobart Trust Company which had been closed by the Banking Department on July 24th, 1929 (S. of C., p. 389).
>
> (2) It controlled the Lebanon National Bank, the Perth Amboy National Bank and the Equitable Title and Mortgage Company, the holdings in which were carried on the books of the company, at about a million two hundred thousand dollars (S. of C., p. 389).
>
> (3) It did not have a sufficient number of directors on its Board to constitute a legal quorum, some of the directors having resigned shortly before July 25th, 1929 (S. of C., p. 49).

(4) Generally, the financial affairs of the defendant company were in a frozen condition.

The above facts were made the gravamen of the bill of complaint and the amended bill. The receivers went into possession and sold the defendant's holdings in the Hobart Trust Company, and the Lebanon National and Perth Amboy banks for cash. In addition thereto, they liquidated practically all the assets of the defendant company.

As a result of these sales, the defendant company on March 7th, 1929 had about a million seven hundred thousand dollars in cash and other assets aggregating about two million dollars. (See letter of receivers, S. of C., p. 547.) On that date the defendant company's financial condition was entirely liquid. Thereby the objection that its finances were in frozen condition was eliminated.

As for the lack of a legal quorum in the Board of Directors, that was cured in January, 1930, when the stockholders held a meeting and duly elected a Board of Directors consisting of nine men.

The new Board of Directors by a duly verified petition filed on January 27th, 1930, prayed for the restoration of the assets of the company and the discharge of the receivers (S. of C., p. 523).

In accordance with the direction of the Court a new election was held under the supervision of a Master and the same nine men were again elected.

In addition, the receivers under the supervision of the Court conducted a post-card ballot and the result was in favor of continuing the company's business and returning the assets of the company to the Board of Directors theretofore elected.

After several hearings the Court made an order appointing statutory receivers and granting a statutory injunction and thereafter made an order

denying the defendant company's petition for the restoration of its assets. It is the latter order from which this appeal is taken and to which we shall now address our attention.

(A) The new board of directors elected by the stockholders was a legal board.

Much has been said at the hearings to the effect that the Board of Directors elected by the stockholders was not a legal board, because of technical infirmities in the proxies and in the conduct of the elections.

The Courts have uniformly held that the presumption is that a corporate election is legal and valid until the contrary is proven. *Citizens Mutual Fire Ins. Co.* v. *Sortwell,* 8 Allen (Mass.) 217; *Coombs* v. *Hartford,* 99 Me. 426; *Duffy* v. *Loft, Inc.,* 151 A (Del. 1930) 223.

Moreover, Section 42 of the Corporation Act provides the exclusive method for attacking the legality of a corporate election. The proceeding must be instituted in the Supreme Court. The Court of Chancery has no power to declare an election invalid or to go into the legality thereof.

Goldstein v. *Ewing,* 62 N. J. Equity, page 69;
Barna v. *Kirczow,* 71 N. J. Equity, page 196.

Since those persons who attack the legality of the election in the instant case have not seen fit to institute any proceeding in the Supreme Court, under Section 42, to set the election aside, it is respectfully submitted that the election is for all purposes valid and legal and not subject to collateral attack in the Court of Chancery.

(B) A receivership is an extraordinary remedy and should be terminated as soon as the reason therefor ceases.

The appointment of receivers for a corporation is an extraordinary remedy and one to which a court of equity will not resort unless impelled by the most urgent necessity.

As the Court said in *McDougal* v. *Huntington & Broad Top Mt. R. R. & C. Co.* (Pa. 1928), 143 Atl. 574, 577-578:

> "There is nothing however which affects a corporation with such serious consequences as does the appointment of a receiver; it is a severe and may be determined a heroic remedy and the conditions that call it into action should be such as would if persisted in, ordinarily be fatal to corporate life."

As soon as the urgent necessity ceases, the reason for the receivership ceases and it should be terminated forthwith.

The leading cases on this subject are:

Featherstone v. *Cook,* Law Rep. 16 Eq. 298;
Trades Auxiliary Co. v. *Vickers,* Law Repts. 16 Eq. 303;

both decided by Vice-Chancellor Malins, and often quoted with approval by the Chancery Courts of this State.

In the last named case, Vice-Chancellor Malins said at page 305:

> "The court will not interfere with the internal affairs of joint stock companies, unless

> they are in a condition in which there is no properly constituted governing body or there are such dissensions in the governing body that it is impossible to carry on the business with advantage to the parties interested. In such a case the court will interfere, but only for a limited time and to as small an extent as possible."

and further at page 307:

> "Then the very object for which it interfered was accomplished when the governing body was appointed on the first of June. I am of the opinion that there was reason for the existence of the suit from its commencement on account of the confusion into which the affairs of the company had been brought, but that the whole object of the suit was accomplished when the governing body was appointed."

In *Posselt* v. *D'Esbard,* 87 N. J. Eq. 574, the Court said at page 578:

> "It is understood that the appointment of a receiver is not an appointment under the statute; it is a pure equity receivership and will be continued only so long as the company shall be without a board of directors competent to act, or so long as the exigencies of the occasion require. The business will be directed to be carried on. Debts as they accrue will be paid. The business of the company is not to be interfered with in the slightest degree."

In *Edison* v. *Edison United Phonograph Co.,* 52 N. J. Eq. 620, the Court enunciated the doctrine at page 625, as follows:

"The power of this court to appoint a receiver of a corporation either because it has no properly constituted governing body or because there are such dissensions in its governing body as to make it impossible for the corporation to carry on its business with advantage to its stockholders, I think must be regarded as settled, but I think it is equally well settled that this power is subject to certain limitations, namely, it must always be exercised with great caution and only for such time and to such an extent as may be necessary to preserve the property of the corporation and protect the rights and interests of its stockholders. As soon as a lawfully-constituted and competent governing body comes into existence, whether it is brought into existence by an adjustment of the dissensions or by the election of a new body, and such body is ready to take possession of the property of the corporation and proceed in the proper discharge of its duties, the court must lift its hands and retire. This is the doctrine, as I understand it, which was laid down by Vice-Chancellor Malins in *Featherstone, Cooke and Trade Auxiliary Co.* v. *Vickers*, 16 Eq. Cas. 298, 303, and which was approved by Chancellor Runyon in *Einstein* v. *Rosenfeld*, 11 Stew. Eq. 309, and by Chancellor McGill in *Archer* v. *American Water Works Co.*, 5 Dic. Ch. Rep. 33."

See also *Elevator Supplies Co.* v. *Wylde*, 106 N. J. Eq. 163 (decided May, 1930).

In "High on Receivers," 4th Ed. 1910, at Sec. 832, the author says:

"As regards the question of the final discharge of the receiver, as distinguished from

his removal for cause, it may be laid down as a general proposition, that when the necessity for the office ceases to exist, the office itself must terminate, and the receiver be discharged. And when a Court of Equity has temporarily taken possession of property by the hands of its receiver, until the proper person may be determined who is entitled to take it, the court will not continue such possession after this necessity ceases."

See also *Platt* v. *Philadelphia & RR. Co.*, 65 Fed. 872;
Badenhausen v. *Kidwell* (Del. 1907), 107 Atl. 297;
Schindler v. *Ringler & Co.*, 206 App. Div. 217;
Clark on Receivers, See 690, 34 Cyc. 171;
Sternberg v. *Wolff*, 56 N. J. Eq. 394, 396.

If the receivers be regarded as equity receivers, they should have been discharged as soon as the emergency alleged in the bill of complaint and proven at the summary hearing had ceased.

The defendant's verified petitions for restoration, the allegations of which were never controverted or disproven, amply established that all the factors which had precipitated the emergency, had been eliminated. The securities of the company had been liquidated, and a board of directors was in office, ready to function. Under the authorities cited above, the receivers should have been discharged upon proof of these facts.

If the receivers appointed under the order of August 8th, 1929 were statutory receivers they should have been discharged under Section 69 of the Corporation Act upon defendant's application.

Section 69 provides for the discharge of receivers and the restoration of the company's assets if the following conditions are shown:

(1) The debts of the corporation have been paid or provided for.
(2) There remains or can be obtained by further contribution sufficient capital to enable the corporation to resume its business.

The petitions of the defendant company showed it to have:

(1) Cash aggregating over $1,700,000.00 as against the contingent liabilities not exceeding $300,000.00.
(2) A balance of at least $1,400,000.00 in cash and other assets of the value of $2,000,000.00, making a total of over $3,000,000.00 with which to resume its business.

In addition the petitions showed that the overwhelming majority of the defendant company's stockholders were eager to continue the company's business. There was apparently no question in their minds that it could resume its business in the manner contemplated by Section 69.

Is the practically unanimous vote of the stockholders to continue in business to be brushed aside for the wishes of a 61¾ share complainant? In balancing the equities the insignificant amount of Solomon Bernstein's stock holdings must be taken into account. As Chancellor Walker said in *Eldrich* v. *Union Bag & Paper Co.*, 81 N. J. Eq. 244, 245:

> "Thus it appears that a very small proportion of the stockholders of the defendant com-

pany are engaged in prosecuting this suit, and while that, in and of itself, is, of course, no bar to relief, it is pertinent upon the question of balancing equities, that is, upon the question whether greater inconveniences and loss will come to the complainants or defendants in the granting or withholding of preliminary relief."

In the case of *Grausman* v. *Porto Rican Am. Tobacco Co.*, 95 N. J. Eq. 156, Vice-Chancellor Bentley, said at page 162:

> "In the presence of the fact that over ninety-nine per cent. of all the stockholders in attendance at the meeting, personally or by proxy, voted in favor of the resolution, it cannot reasonably be expected that the court is impressed with the belief that the complainant will suffer any substantial injury by the consummation of the scheme. * * *
>
> "And in this connection it is significant, though not controlling, that the interest of the protesting stockholders is an exceedingly small percentage."

We respectfully submit that the order of June 24, 1930, denying the defendant-appellant's petitions for restoration of its property be reversed.

Part 3. Appeal from Order of July 1, 1930.

POINT X.

The order of July 1, 1930, allowing $30,000 on account to the receivers and their counsel was erroneous in law and unjustified by the facts.

The defendant-appellant objected and objects to the allowance of any fees out of the company's funds on the ground that the order of August 8th, 1929, appointing the receivers, is void, and, therefore, the complainant and not the defendant should pay the fees demanded.

> *Greenbaum* v. *Lafayette Broad & Realty Corp.*, 97 N. J. Eq. 536;
> *Noxon Chemical Products Co.* v. *Leckie*, 39 F. (2d) 318 (C. C. A. 3—1930).

Moreover, the statute does not provide for payment of fees to receivers appointed under the amendment of 1912 to Section 65 of the Corporation Act. Section 85 of the Corporation Act reads:

> "Before distribution of the assets of an insolvent corporation among the creditors or stockholders the court of chancery shall allow a reasonable compensation to the receiver for his services, and the costs and expenses of the administration of his trust, and the cost of the proceedings in said court, to be first paid out of said assets."

The statute specifically refers only to insolvent corporations. Those portions of the statute which relate to insolvent corporations have no application

to solvent corporations. This Court has so held in *Morse* v. *Metropolitan S. S. Co.*, 88 N. J. Eq. 325, in construing Section 68, which vested in the receiver title to the property of an insolvent corporation.

Section 86a would not cure the situation because it is unconstitutional. An amendment must recite the entire section including the amendments in full.

> *Constitution, State of N. J.*, Section VII, 4;
> *1 Compiled Statutes*, 1910, p. lxxii, cases cited.

Furthermore, the receivers' prayer for allowances having been challenged, a hearing should have been conducted to determine the value of the services rendered.

Clark on Receivers, Vol. I, page 888, says:

> "When exceptions are made to the allowance of counsel fees or commissions and of expenses of the receiver, it has been held that the burden is upon the receiver to show that the payments were reasonable, and it was his duty to make proof of the services rendered and to show the face value of the time and labor actually required in the discharge of those services. The presentation of a bill containing a series of unitemized charges in lump sums of considerable amounts was not sufficient."

See:

> *Commonwealth* v. *Monongahela Val. Bank* (1913), 239 Pa. St. 254, 258, 86 Atl. 719.

Again at page 890, the author says:

> "Said Mr. Justice Lurton, then of the United States Circuit of Appeals of the Sixth Circuit, as follows: 'Nothing is better settled than that an allowance to a receiver by way of compensation for his services is not subject to the arbitrary determination of the court, but should be made upon a hearing at which the parties interested have an opportunity of contesting the claim.' "

See:

Ruggles v. *Patton* (1906), 143 Fed. 312, 314, citing
In re Michigan C. Ry. Co. (1903), 124 Fed. 727, 59 C. C. A. 643;
First National Bank of Bedford, Ore. v. *Stewart Fruit Co.* (1927), 17 F. (2d) 621.

The order of July 1, 1930, appellant contends is the taking of property without due process of law. The cases we have cited under Point VI, supra, establish this. The company and its stockholders were entitled to notice and a full hearing.

The Court's decision to award $10,000 to each receiver and their counsel was based in part upon the Court's knowledge of their administration which does not form part of the record. In its "Reasons upon appeal" (S. of C., p. 596) the Court said:

> "The Court is fully informed of their labors, their cares and anxieties in the discharge of their trust; it having been at all times in inti-

mate touch with them and advised in the problems they had to meet and resolve, and there were not a few."

It is submitted that the knowledge of the Court not supported by matters of record cannot furnish the foundation for the award of fees.

Conclusion.

It is respectfully submitted that the three orders of the Court of Chancery, dated August 8, 1929, June 24, 1930, and July 1, 1930, respectively, should be reversed for the reasons above urged.

Respectfully submitted,

LICHTENSTEIN, SCHWARTZ & FRIEDENBERG,
Of Counsel with Defendant-Appellant.

New Jersey Court of Errors and Appeals

Between SOLOMON BERNSTEIN, Complainant-Respondent, and NEW JERSEY BANKERS SECURITIES CO., a corporation, Defendant-Appellant.	On Bill, etc. On appeal from Court of Chancery.

BRIEF OF HARRY GINSBERG STOCKHOLDER-APPELLANT.

Statement of the Case.

The present appellant is a stockholder owning seventeen hundred shares of the capital stock of New Jersey Bankers Securities Co. (S. of C., p. 2). He appeals from three adjudications of the Court of Chancery, dated respectively August 8, 1929, June 24, 1930 and July 1, 1930.

The events leading up to the said adjudications have been adequately detailed in the brief filed on behalf of the defendant-appellant. It is no part of this appellant's purpose to burden the Court of Errors and Appeals with a repetition of the historical background of the defendant company. There are, however, a few salient facts directly affecting the rights of stockholders, which are deserving of brief mention.

The first is the fact that Solomon Bernstein, the complainant in these proceedings, stands utterly alone in his attempt to dissolve the corporation. No creditor or stockholder has intervened in the suit or retained counsel to abet complainant in prosecuting the proceedings. On the contrary, at every opportunity which was afforded them, the stockholders have repudiated the complainant and his purpose in no uncertain terms.

On July 25, 1929, an order was made by the Court of Chancery requiring the defendant, its stockholders and creditors to show cause before the Chancellor on July 30, 1929, why a receiver should not be appointed for the defendant company. By the same order custodial receivers were appointed for the company. Neither the order to show cause nor notice of the appointment of said custodial receivers was ever served upon the stockholders or creditors of the company.

On August 8, 1929, the custodial receivers were made permanent receivers by a decree of the Court of Chancery bearing said date. Notice of the appointment of said permanent receivers was never given to the stockholders or creditors of the company and they received no opportunity to show cause why the receivers and the receivership should not be continued or made permanent.

On December 4, 1929, an order was made requiring the stockholders to show cause why a liquidating dividend of $1.50 per share should not be paid to stockholders and intermediate allowances fixed for the receivers and their counsel (Defendant's S. of C., pp. 604-606). The said order to show cause was served on the stockholders with a notice that on the return day the receivers and their counsel would apply for allowances aggregating $75,000 (Defendant's S. of C., p. 606).

A stockholders' committee was organized to oppose the proposed liquidation and allowances. A meeting of all the stockholders was called by the committee and notice thereof was sent to every stockholder. The meeting was held on January 16, 1930. Almost unanimously, the stockholders voted to continue the company and to oppose the payment of the liquidating dividend and allowances. A Board of Directors, consisting of nine subtsantial stockholders was duly elected (Defendant's S. of C., pp. 527-530). Three persons holding a total of 265 shares dissented from the actions of the majority.

By direction of the Board of Directors and with the approval of the stockholders a petition was filed with the Court of Chancery for the restoration of the defendant's property and the discharge of the receivers (Defendant's S. of C., pp. 523-534). Upon the filing of the petition an order was allowed requiring the receivers to show cause why the prayer of the petition should not be granted (Defendant's S. of C., pp. 535-536). On February 18, 1930, by direction of the Court, the receivers prepared an order requiring the creditors and stockholders to show cause why the receivership should not be terminated and final allowances made to the receivers and their counsel, and why the receivers should not restore the assets of the company to the directors and officers theretofore elected or thereafter to be elected (Defendant's S. of C., pp. 538-540).

Before the return day of the latter order to show cause, the Court ordered a post-card ballot to be conducted for the purpose of determining whether the stockholders preferred to receive the liquidating dividend forthwith or to have the receivership terminated and the assets returned to the company under the control of the Board of Directors there-

tofore elected or under the control of a new Board of Directors. The results of the post-card ballot indicated that a great majority of the stockholders who voted preferred to have the business continued under the management of the Board of Directors theretofore elected (Defendant's S. of C., 559).

A question was then raised before the Court as to the validity of the election held at the stockholders' meeting on January 16, 1930. To obviate the question, the Court ordered that a new election be conducted under the supervision of a Master in Chancery (Defendant's S. of C., p. 561). The election was accordingly held and the same Board of Directors was again duly elected (Defendant's S. of C., p. 562). The results of the election were placed before the Court by the report of the Master (S. of C., p. 562), and by a supplemental petition filed by the defendant company for the restoration of its assets (Defendant's S. of C., pp. 541-546).

On June 24, 1930, an order was made denying the petitions for restoration (Defendant's S. of C., p. 587).

When the order to show cause of March 10, 1930, was served upon the stockholders, it was accompanied by a notice that upon the return thereof, the receivers and their counsel would apply for final allowances in the matter, aggregating $105,000 to be divided equally among them. On July 1, 1930, the Court made an order allowing the receivers and their counsel $10,000 each, on account (Defendant's S. of C., p. 595). Prior to the making of said order the stockholders had no opportunity to examine the receivers or their counsel as to the quantum, nature and extent of the services performed by them and each of them. No affidavit or statement was filed delineating their efforts and accomplishments and hence the record is barren of facts justifying the allowances.

Grounds for Appeal.

1. The proofs did not warrant the appointment of receivers under the 1912 amendment to Section 65 of the Corporation Act and the decree of August 8, 1929 was therefore erroneous.
2. The decree of August 8, 1929, and the proceedings taken thereunder, were not authorized under the general equity powers of the Court of Chancery.
3. The decree of August 8, 1929 and all subsequent proceedings taken thereunder were void because no notice was given to stockholders of the proceedings and the stockholders were thereby deprived of their property without due process of law.
4. The order of June 24, 1930, denying restoration of the company's property, was erroneous and unjustified.
5. The order of July 1, 1930, allowing $33,000 on account, to the receivers, was erroneous in law and unjustified by the facts.

POINT I.

The proofs did not warrant the appointment of receivers under the 1912 amendment to Section 65 of the Corporation Act; and the decree of August 8, 1929, was therefore erroneous.

The Bill of Complaint by which the action was instituted is constructed under the 1912 Amendment to Section 65 of the General Corporation Act. All the subsequent proceedings, which culminated

in the decree of August 8, 1929, were statutory in their nature and characteristics. The decree itself vested in the Receivers thereby appointed, powers which equity receivers do not possess, notably, the power to wind up the corporation and the power to convey and transfer its property.

Clark on Receivers, Vol. I, pp. 459-460;
Atlantic Trust Co. v. *Consolidated Storage Co.,* 49 N. J. Eq. 402.

Since there was no proof that the defendant company was insolvent or had suspended its ordinary business for want of funds to carry on the same, it was incumbent upon the complainant to establish that the business of the defendant company had been and was being conducted at a great loss and greatly prejudicial to the interest of its stockholders so that its business cannot be conducted with safety to the public and advantage to its stockholders.

P. L. 1896, p. 298, Sec. 65 as amended;
P. L. 1912, p. 535, Sec. 1.

The burden is on the complainant to show that the grounds exist for the appointment of a receiver.

14 A. Corpus Juris, 971.

Complainant failed to sustain the burden cast upon him, in several respects:

(1) No proof whatever was offered to establish that the defendant's business could not be conducted with safety to the public and advantage to its stockholders.

The "public" whose safety the amendment is designed to protect, is not the commonwealth at large but those members thereof who may become creditors of a corporation potentially insolvent. There was no contention that the defendant corporation was potentially insolvent or that potential creditors might be jeopardized by a continuation of its business. Hence the safety of the public was in no way involved.

Proof that the company's business cannot be conducted with advantage to its stockholders was likewise conspicuously absent. The mere fact that the stockholders had not received any dividends for some time before the bill of complaint was filed does not establish that the company's business can not be conducted with advantage to the stockholders.

Kelly v. *Kelly Springfield Tire Co.*, 106 N. J. Eq. 545;
Fox v. *Pathe Exchange*, 106 N. J. Eq. 522.

(2) No competent proof was introduced to show that the defendant's business was being conducted at a great loss when the bill was filed.

The "loss" contemplated by the statute is an operating loss and not a capital loss.

Kron v. *Trenton Automotive Collateral Co.*, 96 N. J. Eq. 162.

The testimony adduced at the hearing indicated that the company had realized a net profit from operations between September 1, 1928 and March 31, 1929 amounting to $13,984.83 (Defendant's S. of C., p. 204). For the period from April 1, 1929 to July 25, 1929, the proofs showed an operating loss of $34,377.82 (Defendant's S. of C., p. 179).

The said figures were arrived at after treating extraordinary and non-recurrent expenses aggregating $66,083.38 as operating losses. The said extraordinary expenses included $31,740 paid for cancellation of undesirable leases (Defendant's S. of C., pp. 206-207) ; $18,604.52 for unusual legal fees (Defendant's S. of C., p. 208) ; $7,738.86 for transfer and registration fees incurred in transferring the capital stock of the company (Defendant's S. of C., p. 206) ; and $8,000 set aside as a contingency reserve which was treated by complainant's witnesses as a loss but was not a loss in fact (Defendant's S. of C., p. 209). Had these extraordinary and non-recurrent expenses not been treated as losses, the company would have shown an operating profit for the period from September 1, 1928 to July 25, 1929 of at least $44,000. It is submitted that said extraordinary and non-recurrent losses were erroneously considered by the Court in arriving at its determination that the defendant company was operating at a great loss.

For the entire period from September 1, 1928 to July 25, 1929, complainant's proof showed that defendant had sustained a net operating loss of $23,000 including all the extraordinary and non-recurrent deductions made by complainant's witnesses (Defendant's S. of C., p. 208). The size of the defendant company and the value of its assets considered, this is not a "great loss" within the meaning of the Statute.

In addition, the operating loss for the first year of the company's existence had been reduced from $332,522 to $23,000, the figure fixed by complainant as the loss sustained during the second year of its existence (Defendant's S. of C., p. 208). The corporation's deficit had also progressively diminished from $780,256 on August 31, 1928 to $688,854

on July 29, 1929, a reduction of $92,000. The radical reduction in the operating expenses and in the deficit, indicate so radical an improvement in the affairs of the company for the eleven months preceding the filing of the bill that the application for a receiver should have been denied.

Fox v. *Pathe Exchange,* supra;
Kelly v. *Kelly Springfield Tire Co.,* supra;
Kron v. *Trenton Automobile Collateral Co.,* supra.

(3) The Court also erred in permitting proof of the alleged depreciation in the value of the Company's assets (Defendant's S. of C., p. 388). Such depreciation did not constitute "loss" within the meaning of the statute. Depreciation in the value of securities held by a corporation for permanent investment can not rightfully be regarded as a loss until the securities have actually been sold and the loss liquidated.

Edward v. *New York Life Insurance Co.,* 271 U. S. 109;
Van Dyke v. *Milwaukee,* 159 Wisc. 460;
Park v. *Grant Locomotive, Works,* 40 N. J. Eq. 114, 121.

By the same token it was erroneous to receive evidence of depreciation in the value of the note of $2,300,000 made by Harry H. Weinberger, prior to the time when the said note became due (Defendant's S. of C., p. 388).

Park v. *Grant Locomotive Works,* supra.

The organization expense incurred by the company should have been treated as a capital item

and should not have been marked off as a loss (Defendant's S. of C., p. 388).

Conyngton Corporate Procedure, p. 503;
7 Harvard Business Reports 46;
Re: First National Bank of St. Louis, 3 B. T. A. 807.

Nor are complainant's proofs on the question of depreciation aided by the fact that subsequent to the appointment of the receivers they liquidated some of defendant's securities at prices less than the amounts at which the same were carried on defendant's books. Values are not fixed by prices realized at receivers' sales. An offer of twenty dollars a share had been made for the Hobart stock one day before the receivers had been appointed and immediately upon their appointment it was reduced to ten dollars a share (Defendant's S. of C., p. 118). Experience establishes that values dissolve at "the block of the auctioneer."

Cook v. *East Trenton Pottery Co.,* 53 N. J. Eq. 29.

In any event, complainant's case must rest upon the proofs adduced at the final hearing and not upon subsequent happenings during the receivers' administration.

POINT II.

The decree of August 8, 1929, and the proceedings taken thereunder, were not authorized under the general equity powers of the Court of Chancery.

(1) An equity receiver cannot be appointed upon a summary hearing. A subpoena should have been issued and the matter regularly brought to issue.

Pierce v. *Old Dominion Copper Mining and Smelting Co.*, 67 N. J. Eq. 399.

(2) The Vice-Chancellor had no jurisdiction to make a final decree appointing equity receivers without a special order of reference to him.

Chancery Rule 130, Section 5.

(3) The stockholders and creditors of the defendant company should have received notice of the appointment of equity receivers.

Chancery Rule 111b.

(4) The directors of the defendant corporation should have been joined as parties defendant before an order appointing equity receivers was made.

14 C. J. 941;
Kean v. *Johnson,* 9 N. J. Eq. 401, 424.

(5) A decree vesting title to the assets of a solvent corporation in equity receivers is erroneous.

Morse v. *Metropolitan Steamship Co.,* 88 N. J. Eq. 325;
1 Clark on Receivers, 459, 460.

A decree vesting in equity receivers the power to wind up a corporation is likewise erroneous.

Atlantic Trust Co. v. *Consolidated Electric Storage Co.*, 49 N. J. Eq. 402.

(6) The decree of August 8, 1929, was predicated on an order to show cause, dated July 25, 1929, requiring the defendant company, its stockholders and creditors, to show cause why a receiver should not be appointed "according to the statute in such case made and provided" (Defendant's S. of C., p. 16). The stockholders and creditors were not served with said order to show cause and the defendant company was brought into Court to show cause why a statutory receiver should not be appointed. The appointment of an equity receiver under these circumstances was erroneous.

POINT III.

The decree of August 8, 1929 and all subsequent proceedings taken thereunder were void because no notice was given to stockholders of the proceedings and the stockholders were thereby deprived of their property without due process of law.

Rule 111b of the Chancery Rules provides:

> "If an 'equity' or 'custodial' receiver be appointed for a corporation, partnership or individual, without notice, there shall be an order addressed to the stockholders and creditors of the corporation or to the creditors of the partnership or individual, as the case may be, to show cause why the receiver and re-

ceivership should not be continued or made permanent."

On July 25, 1929, the Court of Chancery appointed custodial receivers for the defendant corporation (Defendant's S. of C., p. 15). In violation of the provision of Rule 111b above quoted, no notice of the appointment of said custodial receivers was ever given to the stockholders of the corporation.

The said order of July 25, 1929, required the defendant company and its stockholders and creditors to show cause why a receiver should not be appointed in accordance with the prayer of the bill of complaint and according to the statute in such case made and provided. There was, however, no provision in said order to show cause for the service thereof upon stockholders and creditors and hence the stockholders never had opportunity or occasion to show cause why a receiver should not be appointed.

On August 8, 1928, permanent receivers, designated as "receivers in equity," were appointed for the defendant corporation. No notice of their appointment was ever given to the stockholders and they received no opportunity to show cause why the receivers and the receivership should not be continued or made permanent.

It is submitted that the omission to give notice to the stockholders was in violation of their constitutional rights and deprived them of their property without due process of law. It is further submitted that this is so whether the receivers appointed were receivers in equity or receivers appointed under the 1912 amendment to Section 65 of the Corporation Act.

In *Shaw* v. *Standard Piano Co.*, 87 N. J. Eq. 352, Section 65 of the Corporation Act was held

unconstitutional insofar as it permitted the appointment of a receiver without notice to the defendant corporation.

The doctrine of the *Shaw* case ought to be extended to require the giving of notice to the stockholders of a solvent corporation in all cases where the appointment of a receiver is sought, since they have a vested property right which cannot constitutionally be impaired without due notice to them.

The appointment of a receiver for an insolvent corporation, without notice to its stockholders and without affording them an opportunity to be heard, renders the appointment and all proceedings taken thereunder, utterly void.

> *Furrer* v. *Nebraska Building and Investment Co.,* 108 Neb. 698; 43 A. L. R. 225.

The appointment of a receiver under such circumstances constitutes a taking of the stockholders' property without due process of law.

> *Nottebaum* v. *Leckie,* 31 Fed. (2nd) 556. (U. S. Circuit Court of Appeals for this Circuit.)

In *Gallagher* v. *Asphalt Co. of America,* 67 N. J. Eq. 441, the Court said (at 446):

> "I never heard of a decree fixing the status of the corporation as one under disabilities, with reference to the exercise of its franchises being vacated, without notice to all the stockholders and all the creditors of the corporation."

And at 457:

> "In this case if the conclusion had been that an order should be made appointing a receiver the stockholders and creditors would have been brought into court on notice, before any appointment would be made."

The rule above stated applies a fortiori where the corporation involved, as in the instant case, is concededly solvent. The present stockholders have a valuale pecuniary interest in the assets of the company, which are and always have been greatly in excess of its liabilities.

The amended bill of complaint charged that the defendant corporation had no functioning board of directors and no persons adequately representing the interests of stockholders. Under these circumstances the requirement that the stockholders should receive notice of the proceedings, ought to have been strictly enforced. Notice to derelict officers is not notice to stockholders.

> *Furrer* v. *Nebraska Building and Investment Co.,* supra (at 236).

The fact that the stockholders received notice of an order to show cause dated April 29, 1930, why a statutory receiver should not be appointed, does not cure the defects in the original proceedings. When that order to show cause was served, the receivers had been in office more than eight months during which they had liquidated a great portion of the assets of the company. Their authority was derived from the decree of August 8, 1929, and if the decree was invalid, no subsequent proceeding could render it effective. Assuming that a decree appointing statutory receivers could be made at so

late a date, which we deny, such a belated decree could not have any retrospective application or curative effect upon the previous unconstitutional procedure.

In *Nottebaum* v. *Leckie*, supra, the Court said:

> "We stop to inquire, therefore, what subsequent act of the defendant has validated this unlawful procedure? What subsequent act of the defendant has breathed into the dead body the breath of life? By what legal alchemy has this transmutation been wrought? Does some vain attempt to undo the wrong so couple it with the proceeding as to make lawful that which before was wholly unlawful? Because some creditor or stockholder attempted, in obedience to the court's direction, to show cause why an illegal decree should not stand, does the denial of his right clothe such decree with the vesture of legality? Does the court's assumption to do what was forbidden by the Constitution and law of the land become a lawful exercise of power by reason of some act of commission or omission on the part of a creditor or stockholder? Most certainly not." * * *
>
> "The court's original decree, illegal and void for want of notice and an opportunity to be heard, continued to be illegal and void. The status remained unchanged. No act had been done which could give it life, nor estop the defendant from asserting its validity."

Moreover, appellant contends that a summary hearing held eight months after the appointment of equity receivers upon the same bill of complaint was nugatory and could have no effect. The sum-

mary hearing was entirely concluded on August 2, 1929 (Defendant's S. of C., pp. 316, 322, 323).

The matters determined at the summary hearing concluded in August, 1929, were res adjudicata, and the only further relief to which any of the parties were entitled, was through the medium of an appeal.

> *Pierce* v. *Old Dominion Copper Mining and Smelting Co.*, supra, at 412;
> *Farmers' Loan & Trust Co.* v. *Ringwood*, 144 Atl. 868.

POINT IV.

The order of June 24, 1930, denying restoration of the company's property, was erroneous and unjustified.

When the petition for restoration was filed by direction of the board of directors with the approval of the stockholders, every ground upon which the appointment of the receivers on August 8, 1929, was predicated, had been eliminated. The finances of the company were in a liquid condition. The receivers showed liquid assets on hand of more than a million dollars (Defendant's S. of C., pp. 547-551). The defendant's holdings in the Hobart Trust Co., Lebanon National Bank, Perth Amboy National Bank and Equitable Title and Mortgage Co. had all been disposed of. A legal board of directors was in office prepared to function and a majority of the stockholders had manifested their desire that the assets of the company be restored to it under the supervision of that board.

The legality of the election has been attacked by complainant. The courts have uniformly held

that the presumption is that a corporate election is legal and valid until the contrary is proven.

> *Citizens' Mutual Fire Insurance Co.* v. *Sortwell,* 8 Allen (Mass.) 217;
> *Coombs* v. *Hartford,* 99 Maine 426;
> *Duffy* v. *Loft, Inc.,* 151 Atl. (Del. 1913) 223.

Moreover, the General Corporation Act of this State, Section 42, provides the exclusive method for attacking the legality of a corporate election. The proceedings must be instituted in the Supreme Court. The Court of Chancery cannot declare an election invalid or examine into its legality.

> *Goldstein* v. *Ewing,* 62 N. J. Eq. 69;
> *Barna* v. *Kirczow,* 71 N. J. Eq. 196.

The appointment of a receiver for a corporation is an extraordinary remedy, and one to which a court of equity will not resort unless impelled by the most urgent necessity.

> *McDougal* v. *Huntington & Broad Top Mountain Railroad, etc., Co.,* 143 Atl. (Penna. 1928), 574, 577-578.

As soon as the urgent necessity ceases, the reason for the receivership ceases and it should be terminated forthwith.

> *Featherstone* v. *Cook,* Law Rep. 16 Equity 298;
> *Trade Auxiliary Co.* v. *Vickers,* Law Rep. 16 Equity 303;
> *Archer* v. *American Water Works,* 50 N. J. Eq. 33;

Posselt v. *D'Esbard,* 87 N. J. Eq. 574-578;
Edison v. *Edison United Phonograph Co.,* 52 N. J. Eq. 620, 625;
Elevator Supplies Co. v. *Wyld,* 106 N. J. Eq. 163-165;
Sternberg v. *Wolff,* 56 N. J. Eq. 394, 396.

If the receivers were equity receivers they should have been discharged as soon as the emergencies set forth in the bill of complaint and proven at the summary hearing had ceased. If the receivers were statutory receivers, they should have been discharged under Section 69 of the Corporation Act, since the petitions for restoration established that the debts of the corporation had been paid or provided for and that sufficient capital remains to enable the corporation to resume its business.

POINT V.

The order of July 1, 1930, allowing $33,000 on account to the receivers was erroneous in law and unjustified by the facts.

Appellant contends that the original decree of August 8, 1929, was void and hence the receivers must look for compensation, not to the defendant, but to complainant.

Greenbaum v. *Lafayette Broad and Realty Corp.,* 97 N. J. Eq. 536;
Noxon Chemical Products Co. v. *Leckie,* 39 Fed. (2nd) 319.

The order is also erroneous because no opportunity for cross examination of the receivers as to the extent and value of their services was ever afforded to the stockholders.

POINT VI.

Appellant, being a party aggrieved by the adjudications appealed from, has the right to take these appeals.

All persons aggrieved by any order or decree of the Court of Chancery may appeal from the same or any part thereof to the Court of Errors and Appeals. 1 C. S. 450, Section 111, as amended, P. L. 1914, page 133.

A person aggrieved has been defined to be one whose pecuniary interest is directly affected by the decree; one whose right of property may be established or divested by the decree.

> *Andress* v. *Andress,* 46 N. J. Eq. 528, 530;
> *Swackhamer* v. *Kline's Administrator,* 25 N. J. Eq. 503;
> *Chamberlain* v. *Larned,* 32 N. J. Eq. 295, 297;
> *Conover* v. *Walling,* 15 N. J. Eq. 167, 168.

The situation of the instant appellant, whose pecuniary interest is directly affected by the adjudications appealed from would appear to bring him within the protection of the statute and the judicial interpretations thereof. The fact that he has not been formally joined as a party to the suit does not deprive him of his right to appeal.

> *Chamberlain* v. *Larned,* supra.

Conclusion.

The brief filed by Complainant-Respondent, in a weak and abortive attempt to minimize the merit of this appeal, contains the following statement:

> "The appellant, Ginsberg, never appeared either in person or by counsel at any of the numerous hearings held in this cause" (Respondent's brief, p. 3).

As an argument in opposition to this appeal, that statement is an unfortunate choice for the respondent. It is the very fact that this appellant was not present at those summary hearings held in early August, 1929, and that he was not invited to be present, which adds substance and power to his appeal. The meaning implicit in the statement contained in the respondent's brief with reference to this appeal, is that appellant's inaction during the period when the receivers were administering the estate, evidences that the appeal is without merit. The implication comes with ill grace from respondent, when it is considered that appellant's inaction may be ascribed directly to the conduct of the respondent in instituting and prosecuting a proceeding which resulted in the deprivation of this appellant's property without due process of law. It is submitted that no appeal can be without merit where the record discloses and respondent concedes, facts from which an infringement of the appellant's constitutional rights is apparent.

The defendant company was no proper subject for the appointment of receivers. The evidence taken at the summary hearing or so much thereof as was legal and competent failed to establish the necessity for receivership. The financial condition

of the company prior to and ever since August 8, 1929, fortifies the contention that the defendant was no menace to the "public" safety or to its stockholders, but was rather a company whose growth had been interfered with by repeated litigation and whose investments had to some extent fallen short of expectations. There is probably no corporation in America engaged in the business of buying and selling securities which can deny that some of its investments have not netted the anticipated return. In spite of the shrinkage in the value of defendant's investments, in spite of the extraordinary expenses paid by defendant for costs and fees allowed in connection with the various litigations against it, the complainant's own figures establish that on July 25, 1929, the company's assets were $3,273,623, and its liabilities $9,588.60, (Defendant's S. of C., p. 388).

If the power of the courts may be extended to permit the appointment of receivers for, and the dissolution of, corporations whose financial condition is no worse than that of the defendant, then a new era has arrived in the legislative and judicial attitude toward corporations.

Whether receivers should have been appointed for the defendant or not, or whether receivers should have been appointed in the manner employed in this case or not, the petition for restoration should have been granted under the circumstances existing when it was filed. The stockholders of the company on every occasion when they had opportunity to do so, expressed themselves in favor of continuing the corporation's existence and operations. During this period of depression, when every governmental agency is straining to encourage the re-habilitation of corporate enterprises, the restoration of this company to active life could

work nothing but good. Its salutary effects would be felt, not merely among the fifteen thousand stockholders of the defendant company, but throughout the entire body politic.

Respectfully submitted,

PLATOFF, SAPERSTEIN & PLATOFF,
Solicitors of Appellant,
Harry Ginsberg.

DAVID SAPERSTEIN,
of Counsel.

PRESS OF FREMONT PAYNE, 80 Washington Street, New York City.

[6501]

New Jersey Court of Errors and Appeals.

On Bill, etc.

On Appeals from Orders in Chancery.

Sat Below—Vice Chancellor Backes.

Between

Solomon Bernstein,
Complainant-Respondent,

and

New Jersey Bankers Securities Co.,
a corporation,
Defendant-Appellant.

SUPPLEMENTAL BRIEF OF COMPLAINANT-RESPONDENT.

At the last term of this Court (October, 1930) we presented our brief in opposition to the two briefs submitted respectively by the defendant-appellant and by Harry Ginsberg, the intervening stockholder. By that brief we think we fully met all the contentions advanced by those counsel who were then our adversaries. In the preparation of our brief we were then considerably hampered by the fact that the appellants had omitted from the record on appeal a few of the important exhibits which were before the Chancellor at the hearing which resulted in the order appointing Equity Receivers and most of the exhibits and all of the testimony which were before the Court below

both upon the complainant's application for the appointment of Statutory Receivers and upon the petition of the defendant company to terminate the receivership and restore the assets to those who claimed to be its board of directors. We were because of said omissions unable in our brief to make specific reference to the proofs supporting some of the statements of fact appearing in our brief. In some places we were obliged to argue by way of anticipation, looking forward to a proper completion of the record. We objected at the last term to appellants' omissions and this Court granted us leave to bring in the omitted matter. That (with the exceptions hereinafter stated) we have done, presenting at this term two additional volumes which we have designated as follows:

VOLUME I. ADDITIONAL EXHIBITS.
VOLUME II. ADDITIONAL TESTIMONY AND PLEADINGS.

There are six items which we have not caused to be printed for the reason that they would constitute another 1,500 pages of printed matter. We had hoped to be able to secure a stipulation from present counsel for the appellants which would furnish in abbreviated form the content of those exhibits, which exhibits are as follows:

(1) The testimony of Harry H. Weinberger as President of the New Jersey Bankers Securities Co. and of his associate officers and directors, given before the Legislative Investigating Committee known as the Davis Committee, revealing the stock manipulations, illegal dividends and other acts of corporate misconduct on the part of the officers and directors of the defendant company.

(2) The record in the case of *Mayer* v. *New Jersey Bankers Securities Co.,* in which suit was sought the appointment of a receiver because of the misconduct disclosed before the Davis Committee.

(3) The record of the proofs and proceedings in the case of *Bernstein* v. *New Jersey Bankers Securities Co.* (Suit No. 1), involving a proposed transaction between the defendant company and the Equitable Financial Corporation of New York.

(4) The books of account of the defendant company.

(5) The minute book of the defendant company.

(6) Numerous petitions, orders and transcripts of testimony taken before Vice Chancellor Backes with relation to the sale by the Receivers of the defendant company's holdings in the Hobart Service Trust Company, Perth Amboy National Bank and Lebanon National Bank of New York.

We have been partially successful in securing a stipulation. Our adversaries have in writing stipulated and admitted that we have in our brief correctly stated who the incorporators of the company were, who were its directors and officers from time to time, the various resignations and changes amongst the directors and officers and all the resolutions and corporate action taken by the company's board of directors and its executive committee and officers, and that all such statements are supported by the minute book of the company (Exhibit C-3). Our adversaries also ad-

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mit that all resolutions and other excerpts from the company's minute book have been correctly set forth by us in our brief and that all references that we have made in our brief to the minute book and the by-laws are correct. Our adversaries have also made some admissions with respect to (a) the suit of Fannie Mayer against the defendant company, (b) the nonpayment of the Harry H. Weinberger note of $2,300,000, and (c) suit No. 1 by Bernstein against the defendant company to enjoin the Equitable Financial deal. These admissions in our opinion lessen considerably the need for printing the six items above mentioned. That stipulation together with a portion of the record in the first Bernstein suit we are printing and presenting as "Volume III. Stipulation and Additional Exhibits". We believe that because of the printing by us of the additional three volumes and the stipulation by our adversaries, there is presented enough of the record of the Court below to enable this Court to pass upon the issues on appeal and to determine the correctness of the three orders of the Chancellor which are the subject of the pending appeals.

Our brief submitted at the October Term met every legal contention then advanced in the briefs by counsel then representing the appellants. Those briefs are not now on file. New counsel now appearing in the case have filed briefs which present substantially the same arguments and cite the same authorities as the briefs filed by former counsel, except that the present briefs for the appellants do not assert that complainant's bill was multifarious. Apparently that contention is abandoned by present counsel.

We therefore deem our former brief an adequate reply to the new briefs filed in behalf of the ap-

pellants and we request this Court to receive and accept our former brief as such reply and to consider the facts and arguments by us there expressed in the light of the record as it now stands completed.

There are, however, a few additional comments that we desire to make with respect to appellants' contentions:

POINT I.

Our adversaries erroneously insist that the Receivers appointed in August of 1929 were Statutory Receivers.

We have in our main brief adequately presented the situation that confronted the Chancellor on July 25, 1929, when he appointed Custodial Receivers and on August 8, 1929, when he appointed Equity Receivers. The Court's opinion (S. C., 596) best presents the conditions that prevailed. To have made no appointment would have invited complete destruction of the company's property, most of which consisted of its holdings in three banks, one of which had already been closed by the State banking authorities and two of which were on the brink of being closed by the Federal banking authorities. Not to have made an appointment would have meant that the company would have continued until it finally sank, without a board of directors and with its affairs under the sole supervision of a young lady bookkeeper, the secretary of the company. Unwilling then, in the face of the emergency that existed, to appoint Statutory Receivers and thereby ring down the curtain on this wretched cor-

porate enterprise, the Court did the only other thing that it could do, it appointed custodians—conservators—Equity Receivers. The Court was careful in its order to indicate that they were not Statutory Receivers but only Equity Receivers and to defer until some future date action on complainant's prayer for the appointment of Statutory Receivers. In their briefs our adversaries insist that these Receivers were Statutory Receivers and say that that must be so because they were given the legal title to the assets of the company. Nothing is further from the fact. The Receivers were not given any legal title nor could the Court confer any legal title upon them. It is the statute and the statute alone that vests the title in the Receiver but only when the appointment is under the statute. The Court below was careful to do nothing that was inconsistent with a continuance of the corporate life of the defendant and a preservation of its property and business. The Receivers were authorized "to preserve and protect its (the company's) property and business; and to protect the title and possession and to secure and continue the business of the same." (See State of Case, pages 53 to 60.) Every power conferred upon the Receivers in and by the order of their appointment clearly and expressly indicates that the power is to be exercised merely to hold, conserve, protect and preserve the estate entrusted into their possession. In Paragraph 5 of the order they are "authorized and empowered to sell and dispose of any property of the company, real and personal, and to give good and sufficient deeds and instruments of conveyance or transfer therefor, *subject, however, to prior confirmation of sale by this Court.*" (Italics ours.) This reservation demonstrates that the Court intended to vest

no title in the Receivers but to enable them to make necessary sales after it shall have specifically approved of such sales, a proceeding wholly unnecessary in the case of a Statutory Receiver where by force of statute the Receiver may without specific authority from the Court sell and convey. A reading of the entire order will demonstrate better than we can do here in argument that there is no merit in the contention that these Receivers were not Equity Receivers. The Court calls them "Equity Receivers", confers upon them the powers that they need as such, provides (paragraph 17) for their discharge in the future upon the appointment of Statutory Receivers in their place and expressly reserves (paragraph 18) the right to add to the foot of the decree a permanent injunction and such receiver's appointment as is characteristic of receiverships under the Corporation Act.

We are at a loss to understand how counsel reading that order can thereafter earnestly contend that the appointees were anything but Equity Receivers. We do, of course, understand why it is not to the advantage of the appellants to admit the true character of the appointment that was made in August of 1929 and to admit that the statutory receivership did not arise until eight or nine months later when the Statutory Receivers were appointed upon the full and complete hearing, after notice not only to the defendant company but to all its stockholders and creditors. *The final decree appointing Statutory Receivers has not been appealed.* The reason for this is obvious. To appeal from that decree necessarily involves the appellant bringing up all the testimony that was adduced at the final hearing which resulted in the appointment of the Statutory

Receivers. None of that testimony is favorable to appellants' contentions. All of it supports complainant's right to the appointment of Statutory Receivers. Of course, if appellants can give to the interlocutory order appointing Equity Receivers the quality of a final decree appointing Statutory Receivers and yet avoid the damaging proofs, most or much of which the appellants themselves adduced, they might be able to enjoy opportunities of criticism or attack otherwise not available to them.

Then again in August of 1929 the Court below was obliged to determine whether or not the company's business could be conducted with safety to the public and advantage to the stockholders. In the very nature of things, this involved something prospective, something that ordinarily can be inferred only from the past and current history of the company. In this case the final hearing was continued about nine months after the interlocutory order was made. The Receivers' experiences during those nine months in holding and selling the securities of the company are no small factor in the determination of the question as to whether the company could or could not conduct its business with safety to the public and advantage to the stockholders. Surely the events of those nine months, as those events have occurred and become established facts, are of some importance with respect to that which was only prospective before those nine months elapsed. Appellants evidently are not willing that the Court's finding in August of 1929 that the company could not thereafter continue its business with safety to the public and advantage to its stockholders should be considered in the light of the events that actually came to pass.

Then again whatever complaint has been made by appellants about no notice being given to the creditors and stockholders of the company of the appointment of Equity Receivers under the order appealed from (although we have in our main brief indicated that no such notice is necessary) loses its force and significance when it is remembered that before any final decree was entered or any permanent injunction issued or any Statutory Receiver appointed, ample notice was given not only to the defendant company (as in the case of the earlier appointment) but also to all its stockholders and creditors.

There is reason to pause. Why should these appellants persist in an appeal from an order appointing Equity Receivers when the question as to the propriety of that appointment has become purely academic and is nothing more than a moot question. The Equity Receivers ceased to exist on May 29, 1930, when their successors, the Statutory Receivers, were appointed and at once took possession of the company's property. That persistence, coupled with the fact that the appellants sought to emasculate the record of the subsequent proofs, can suggest but one conclusion, viz., that a situation was present that warranted not alone the appointment of conservators to preserve the company's property but also of Statutory Receivers to liquidate and wind up its affairs.

POINT II.

Our adversaries erroneously insist that Section 69 of the Corporation Act made it obligatory upon the Court below to discharge the Receivers and turn the company's property over to its alleged board of directors.

It will be remembered that when the defendant company, through its alleged Board of Directors, sought by petition addressed to the Chancellor to secure the restoration of its property, that property was then in the hands of Receivers not appointed under the Statute. The Receivers then functioning were Equity Receivers, appointed because the company was in peril of utter destruction and because it had no functioning Board of Directors or set of officers. The ultimate appointment of Statutory Receivers by the unappealed Final Decree came after the Court had decided not to return the company.

Section 69, relied upon by appellants, is made applicable to appointments under the 1912 amendment only because Section 86-a is broad enough to accomplish that result. It will, however, be observed that Section 86-a is operative only in those cases where there had been previously an injunction restraining the company from exercising its corporate privileges and franchises. No such appointment had yet taken place when the appellants' petition for restoration was presented and refused. In fact the entry of such an injunction was one of the things expressly and studiously avoided by the Chancellor in the previous order appointing Equity Receivers. How then can Section 69 have any application?

If, however, Section 69 may be invoked, any application under it is addressed to a purely discretionary power vested by the Legislature in the Chancellor. The language of the section clearly indicates that it is permissive only and was intended to enable the Chancellor to direct a recon-

veyance where his discretion has been appealed to and his judgment persuaded. On this question the Chancellor's discretion is not controlled by the wishes of the stockholders and creditors, even though those wishes be the unanimous expression of all the stockholders and creditors. The safety to the public is a very vital factor in the question. As was said by Vice-Chancellor Lane:

> "Not only are the stockholders and creditors to be considered but the public generally. If every stockholder and every creditor consented to a plan of reorganization, unless this Court can see that the business can be resumed with safety to the public, it ought not to approve the plan." *Sullivan* v. *Newark Lunch Room Co.*, 89 Eq. 146.

In the last mentioned case Vice-Chancellor Lane held that the Court should scrutinize any plan of reorganization before permitting it to become operative and the Court should on its own motion refuse to approve any plan unless it appears that the business can be resumed with safety to the public.

Have the appellants presented a single fact or circumstance that should impel the exercise of the Chancellor's discretion? It would be needlessly tiring for us here to analyze the proofs submitted by those who claim to be the directors of the company and who ask that the two million dollars be turned over to them for their handling. The names of those nine men appear on page 92 of our brief. We don't know what they would have done with the fund of two million dollars if Vice-Chancellor Backes' discretion had been prevailed upon to surrender its control to these nine men. Nor did they themselves know, if we are to be-

lieve the testimony given by them in the Court below. *THEY HAD NO PLAN* and presented none to the Court, unless it be the plan testified to by two or three directors that if they got back the property they would hire a "securities expert" and let him handle the fund. These men who claim to be the directors of the company may have been successful clothing manufacturers or ladies' dress manufacturers or paper box manufacturers or retail merchants (as the evidence indicates they were) but there was no evidence in the record that any of them had had any experience in dealing in stocks, bonds and other securities. How much they understood of the field in which they intended to venture with two million dollars of the stockholders' money can be best understood if one will read the testimony of the "expert" Clarence G. Wolfe, called by them in support of their petition (see Volume II of Additional Testimony, pp. 335 to 349). Here was an expert who thought the fund could be made to produce 22% a year net profit with safety to principal and yet he at first refused to disclose how it could be done and thereafter, when pressed, was unable to reveal the mystic though potent formula. This is the expert who after testifying that he could make the fund produce 18% to 22% was asked:

> "Q. The door is wide open for you to tell us how you would make 18 to 22%. A. Indeed. I am not being paid any fee for telling you how to do all this. I am just out here to help the case along if I can by invitation."

A reading of the testimony of that "expert", and he is the only one whom the directors called, will present as humorous and extravagant a pipe dream as ever fell to the lot of an opium eater. And

it is upon proofs of that character that the Chancellor was asked to take two million dollars belonging to thirteen thousand stockholders and commit that fund to the tender mercies of these men and securities experts. Appellants' witness Wolfe said:

> "A fund of two million dollars is a sufficiently dignified amount to call for due consideration *but not too much consideration.*" (Italics ours.) See Volume II, State of Case, page 338.

The trouble that the expert Wolfe and the pseudo directors ran up against in this case was that the Court below didn't share the view that a fund of two million dollars need not receive "too much consideration".

POINT III.

Our adversaries erroneously insist that the legality of the election of the directors may not be inquired into in this cause.

We have contended in our main brief that there has been no legal election of the directors who claim to be such, and we have in that brief stated our reasons therefor. Our adversaries have not met those reasons but have sought to escape their force by insisting that it is not within the power of the Court of Chancery to determine the validity of an election and that such power resides exclusively in the Supreme Court. Undoubtedly the rule is that where the sole purpose of a proceeding is to test the validity of an election, jurisdiction lies exclusively in the Supreme Court. We, however, insisted in the Court below and we in-

sist here that where the question of the validity of an election arises incidentally in a cause properly brought in equity the incidental question may be determined by the Chancellor as any other question of fact or law that arises in the trial of any suit in Chancery.

Our adversaries in support of their statement that the Court of Chancery cannot declare an election invalid or examine into its legality have referred only to two cases, namely:

> *Goldstein* v. *Ewing*, 62 N. J. Eq. 69;
> *Barna* v. *Kirczow*, 71 N. J. Eq. 196.

An examination of the *Goldstein* case shows that the proceeding had but one purpose, viz., to set aside the election of directors, and was inaugurated by a petition under a statute which was in that case declared to be unconstitutional. The question of the validity of the election was not incidental to any cause equitable in nature.

An examination of the other case relied upon by appellants, *Barna* v. *Kirczow*, shows that it does not support the appellants' contention. On the contrary it states (at p. 202) the rule that we contend for, in the following language:

> "That question, undoubtedly, is solely one as to the validity of the election of officers of an incorporated association.
>
> I can find no warrant for a court of equity deciding a case in which this is the sole issue. There are cases in which a court of equity may determine this question when it is incidental to the determination of a case of equitable cognizance. *Johnston* v. *Jones*, 23 N. J. Eq. (8 C. E. Gr.) 216.

> But where the proceeding—whatever may be its form—is nothing more nor less than a controversy as to which of two sets of rival officers of a corporation are its legally elected representatives, the jurisdiction to determine the controversy is exclusively in a court of law."

We point to the case of *Johnston* v. *Jones*, 23 N. J. Eq. at page 226. The rule is stated by Chancellor Zabriskie as follows:

> "If the question of the legality of an election, or whether a certain person holds such an office, arises incidentally in the course of a suit of which equity has jurisdiction, that court will inquire into and decide it, as it would any other question of law or fact that arises in the cause. But the decision is only for the purpose of the suit; it does not settle the right to the office, or vacate it if the party is in actual possession."

In the case at bar the question as to the validity of the election of the directors arose as a mere incident in the receivership suit and in connection with the petition presented by those alleged directors seeking restoration of the company's assets.

Conclusion.

Fortunately for the thirteen thousand stockholders who look to the Courts of this State for protection against corrupt practices in business and corporate mismanagement, the affairs of the New Jersey Bankers Securities Co. have been for more than two years in the hands of a Judge

who has been both discerning and firm. This Court cannot be unmindful of what has happened in the securities markets of this country within the last year. The debacles and collapses and all the disaster consequent thereto are matters of common and universal recognition. If the Chancellor had seen fit to withhold his appointment of Receivers when he made it or if he had seen fit to turn this company over when he was petitioned so to do, there would be no fund today to intrigue the imagination of so-called "experts" and the nine directors who are so unselfishly willing to play with this "dignified amount".

For all the reasons urged in our main brief, supplemented by the foregoing comment, we respectfully ask that the orders under review be affirmed.

Respectfully submitted,

LEBER & RUBACK,
Of Counsel with Respondent.

THE COURT PRESS—47 West Street—Bowling Green 2820

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EXHIBIT C. 1.

Report of Examination

of

HOBART TRUST COMPANY

located at Passaic, N. J.

at close of business June 22, 1929.

Filed .....192...

Commissioner of Banking and Insurance.

Exhibit C. 1.

(182)

(BANKS OR TRUST COS.)

EXAMINER'S REPORT of the condition of THE HOBART TRUST COMPANY located at Passaic, in the County of Passaic, at close of business, June 22, 1929.

John J. Roegner, President.

W. H. Elliot, Exec. Vice Pres and (Treasurer)

(BALANCE SHEET)

CONSOLIDATED REPORT

Bank vault opens at 8.00 A. M. (2 branches)

RESOURCES		Amount
Loans and Discounts		$4,730,805.87
Overdrafts		
Stocks and Bonds, etc.		840,672.52
Bonds and Mortgages		307,650.00
Cash on Hand, viz.:		
Currency	$ 96,466.00	
Gold	8,780.00	
Silver	10,199.15	
Nickels and Cents	1,465.87	
		116,911.02
Checks and Other Cash Items		48,140.53
Due from Other Banks, etc		101,703.74
Banking House	$1,165,687.50	
Furniture and Fixtures	71,135.00	
		1,236,822.50
Other Real Estate		48,367.75
Title Plant		
Current Expenses Paid	$ 39,573.23	
Expense, Real Estate	1,583.15	
Taxes Paid	11,412.13	
Interest Paid	28,212.36	
Difference account	266.81	
Profit and Loss	2,000.00	
		83,047.68
Other Assets, viz.:		
Interest due but not collected		19,532.96
Mtges. sold with guarantee (contra)		386,300.00
Customers Lia. for Acceptances		28,308.32
Cash Short		17.96
Total		$7,948,280.85

Exhibit C. 1.

LIABILITIES		Amount
Capital Stock		$1,000,000.00
Surplus Fund		300,000.00
Undivided Profits, viz.:		
Interest	$ 22,826.48	
Discount	48,737.20	
Exchange	298.46	
Safe Deposit	398.25	
Rents, Real Estate	7,595.00	
Commissions, Trust	1,035.80	
Protest Fees	1,094.50	
Profits Sec. Sold	28,928.00	
Recoveries	880.40	
Profit and Loss	179,961.54	
		291,755.63
Dividends Unpaid		132.00
Demand Deposits	$1,784,833.09	
Demand Ctfs. of Deposit	126,453.97	
Time Deposits	3,644,021.25	
Time Ctfs. of Deposit		
Christmas and Holiday Clubs	174,700.14	
Certified Checks	26,151.64	
Treas. Checks	3,152.99	
		5,759,363.08
Due to other banks		
Notes and Bills Rediscounted		
Bills Payable		
Other Liabilities, viz.:		
Unearned Discount		24,196.99
Reserve for Interest, etc.		28,224.83
Mortgages Payable Due Aug., 1931		130,000.00
Mtges Sold with guarantee (contra)		386,300.00
Acceptances Outstanding		28,308.32
Cash Over		
Total		$7,948,280.85

Exhibit C. 1.

THE HOBART TRUST COMPANY — June 22, 1929

STATEMENT OF ASSETS & LIABILITIES
as shown by books of each office

ASSETS	Main Office	Merchants	Service	Total
Loans and Discounts	$2,975,918.37	$ 766,462.37	$ 988,425.13	$4,730,805.87
Stocks and Bonds	840,672.52			840,672.52
Bonds and Mortgages	307,650.00			307,650.00
Cash	45,675.07	31,719.00	39,536.95	116,911.02
Checks and Other Cash Items	11,995.21	22,281.38	13,863.94	48,140.53
Dues from Banks	101,703.74			101,703.74
Banking House	1,165,687.50			1,165,687.50
Furniture and Fixtures	71,135.00			71,135.00
Other Real Estate	12,350.70	36,017.05		48,367.75
Current Expenses	51,772.72	15,855.21	15,152.94	82,780.87
Over and Short	118.50	32.00	116.31	266.81
Interest due but not collected	18,593.53	232.07	707.36	19,532.96
Due from Main Office		1,004,068.56		
Cash Short	8.00	7.96	2.00	17.96
Mtges. Sold with guarantee (Contra)	386,300.00			386,300.00
Cust. Liab. for Acceptances (Contra)	28,308.32			28,308.32
TOTALS	$6,017,869.18	$1,876,675.60	$1,057,804.63	$7,948,280.85
LIABILITIES				
Capital Stock	$1,000,000.00			$1,000,000.00
Surplus Fund	300,000.00			300,000.00
Undivided Profits	179,961.54			179,961.54
Current Income	83,874.32	$ 10,205.61	$ 17,714.16	111,794.09
Dividends Unpaid	132.00			132.00
Demand Deposits	923,909.09	309,865.01	551,108.99	1,784,883.09
Demand Ctfs. of Deposit	80,486.72	32,564.30	13,402.95	126,453.97
Time Deposits	1,823,659.05	1,401,879.33	418,482.87	3,644,021.25
Xmas and Holiday Clubs	57,146.39	100,661.50	16,892.25	174,700.14
Certified Checks	17,468.73	6,653.20	2,029.71	26,151.64
Treas. Checks	2,970.77	95.00	87.22	3,152.99
Due to banks				
Notes and Bills Rediscounted				
Bills Payable				
Reserve for Interest, etc	16,294.74	9,430.09	2,500.00	28,224.83
Unearned Discount	12,443.10	5,321.56	6,432.33	24,196.99
Mortgage Payable	130,000.00			130,000.00
Due to Main Office			29,154.15	
Mtgs. Sold with Guarantee (Contra)	386,300.00			386,300.00
Acceptances Outstanding	28,308.32			28,308.32
Due branches	974,914.41			
TOTALS	$6,017,869.18	$1,876,675.60	$1,057,804.63	$7,948,280.85

Exhibit C. 1.

18. Ascertain, if possible, whether any director has become disqualified by hypothecation of stock. 20 shares in the names of Willard H. Elliott a director, his only holding, pledged as collateral with another bank.
19. Do the by-laws seem to be adequate and satisfactory, and do their provisions seem to be observed by the officers and directors of the bank? Yes.
20. Are loans (original and renewals) to directors, officers and employes accompanied by written application and acted upon by board of directors or executive committee before loans are granted? Not in all cases.

(182 c)

OFFICERS AND EMPLOYEES

List all officers (including solicitor) giving titles. List comptroller, auditor, general ledger bookkeeper, note clerk, all tellers, individual ledger bookkeepers (demand and savings). Give only number of employees below grade of bookkeeper.

No. of Shares Owned	Name	Title	Salary	Bond	Liability as payer (individual and firm) including overdrafts	Liability as indorser of guarantor	Other Occupation
50	John J. Roegner	President	5,000.00				
20	Willard H. Elliot	Exec. V. P. & Tr.	11,000.00				
500	F. N. Bidwell	Vice-President	10,000.00				
200	Arthur S. Hughes						
68	R. B. Armstrong	"					
50	Michelino Grasso	"					
20	Michael Slavin	"					
130	A. W. Shaw	V.P. (Service Br.)	7,500.00		C 3,500.09		
30	E. F. Hackett	" (Merchants Br)	6,000.00		9,864.36	8,690.30	
(*) 1	Joseph A. Jackovics	Vice-President	5,000.00		C 22,000.00	2,284.50	
					11,544.95		
102	R. S. Ackerman	" & Sec'y	5,000.00				
50	J. Vincent McGuire	Asst. Tr. & Asst. Sec'y	3,600.00		C 206.00		
20	John F. McGuire	Asst. Tr. & Auditor	3,400.00			3,291.53	
	Joseph W. Roberts	Asst. Treasurer	3,000.00			7,209.55	
	Arthur Berdelius	"	2,620.00				

2	Irving Vogel	Asst. Secretary	2,500.00		3,164.93	
40	18 other—Main Office		25,169.68	)		
	13 " Service		17,440.00	) C	1,600.00	
	10 " Merchants		14,180.00	)	8,116.97	
	(*) Disqualified as a Vice-President by lack of stock holdings.					
	Bonus of 10% based on salary for the year, in 1928.					
1243	**Totals,**		121,409.68		59,997.21	21,475.88

1. Are surety bonds in force? Yes. 1a. Give serial number of bond. #9664. Name of surety company. Amount $150,000.

Bankers Blanket Bond, Form #8 Globe Indemnity Company, Newark, N. J.

2. In whose custody lodged? President Roegner.

3. Name officers or employees who are not bonded or insufficiently bonded. Bankers Blanket Bond
Annual premium $6,180.20 paid to 1-10-30

Exhibit C. 1.

(182 d)

BOOKS AND ACCOUNTS

GENERAL LEDGER

What form of general ledger is used? Loose Leaf Is a daily Statement taken? Yes If so, from general ledger? Yes

How often are accounts with correspondent banks reconciled? Monthly Is a satisfactory permanent record kept of such reconcilements? Yes

Active accounts should be semi-monthly

Who reconciles accounts with correspondent banks? Treasurer McGuire

If reconciled by general bookkeeper or assistant are they verified by another? Vice President Jackovcs.

How often are loans and discounts proven? Monthly

Is the over and short account over-active? No, but high in amounts If so, should this matter be given special consideration by board of directors? Yes.

Are separate accounts carried for "Interest Received" and "Interest Paid"? Yes

Give full explanation of any account carried elsewhere which properly belongs on the general ledger. Lincoln Trust Co. of Paterson carried on Demand Ledger

DEMAND AND SAVINGS LEDGERS

1. What form of demand ledgers are used? Machine 1a. Savings ledgers? Machine 1b. Inactive ledgers? Machine
2. How often are demand ledgers balanced? Daily 2a. Savings ledgers? Monthly 2b. Inactive ledgers? Quarterly
3. If statement system is used, so state and ascertain how often rendered. And by whom? Yes—monthly upon active a/cs rendered by all clerks 3a. Are they compared? Yes, daily.
4. If statement system is not used, is a periodical effort made to secure pass-books for the purpose of balancing? 4a. In either case, is a notation made on ledger when statement is rendered or pass-book balanced? Yes.
5. Give method of verifying savings or time deposit pass-books. Nat'l Cash Register Machine in use, control key held by Treas. McGuire
6. Give rates of interest paid on demand accounts. 2% 6a. Rates on savings accounts. 4%.

Exhibit C. 1.

HOBART TRUST COMPANY June 22, 1929

COMPARISON OF STATEMENTS—Examinations Nov. 13, 28 and June 22, 29

Assets	June 22, 29	Nov. 13, 28	Increase	Decrease
Loans and Discounts	$4,730,805.87	$5,285,253.09		$ 554,447.22
Stocks and Bonds	840,672.52	788,748.02	$ 51,924.50	
Bonds and Mortgages	307,650.00	287,250.00	20,400.00	
Cash	116,911.02	237,058.94		120,147.92
Checks and Other Cash Items	48,140.53	92,860.70		44,720.17
Due from Other Banks	101,703.74	395,515.90		293,812.16
Banking House	1,165,687.50	1,165,000.00	687.50	
Furniture and Fixtures	71,135.00	71,112.00	23.00	
Other Real Estate	48 367.75	18,754.36	29,613.39	
Interest Due—uncollected	19,532.96		19,532.96	
Mtgs. Sold with Guarantee (Contra)	386,300.00	525,550.00		139,250.00
Cus. Liab. for Acceptances	28,308.32		28,308.32	
	$7,865,215.21	$8,867,103.01	$ 150,489.67	$1,152,377.47
Liabilities				
Capital Stock	$1,000,000.00	$1,000,000.00		
Surplus	300,000.00	300,000.00		
Undivided Profits	208,689.99	229,458.32		$ 20,768.33
Demand Deposits	1,940,773.69	2,510,458.91		569,685.22
Time Deposits	3,644,021.25	3,877,350.09		233,328.84
Xmas and Holiday Clubs	174 700.14	292,440.24		117,740.10
Unearned Discount	24,196.99		24,196.99	
Reserve for Interest, etc.	28,224.83	1,845.45	26,379.38	
Mortgage Payable	130,000.00	130,000.00		
Mtgs. Sold with Guarantee (Contra)	386,300.00	525 550.00		139,250.00
Acceptances	28,308.32		28,308.32	
	$7,865,215.21	$8,867,103.01	$ 78,884.69	$1,080,772.49

SUMMARY

Loans and Discounts	$ 554,447.22	Demand Deposits	$569,685.22	
Cash	120,147.92	Time Deposits	233,328.84	
Checks and Cash Items	44,720.17	Xmas and Holiday Clubs	117,740.10	
Due from banks	293,812.16			$ 920,754.16
	$1,013,127.47	Dec. Undivided Profits		20,768.33
Stocks and Bonds	$51,924.50	Reserves (Set up)	$ 26,379.38	
Bonds and Mtges.	20,400.00	Excess Accrual Items	4,664.03	
Banking House and F. F.	710.50			31,043.41
Other Real Estate	29,613.39			
	102,648.39	Net Decrease		$ 910,479.08
Net Decrease	$ 910,479.08			

Net Decrease in Assets previous examination 1-18-28 to 11-13-28 .. $1,648,600 (10 months)
Net Decrease in Assets this examination 11-13-28 to 6-22-29 ..... 910,400 (7 months)

$2,559,000

DIRECTORS

Opposite the name of each director enter full amount of all paper in institution upon which his name (individual or firm) appears as maker, indorser, or guarantor, but where two or more directors are liable on the same paper, deduct from the total the duplicate liabilities so as to show the net liabilities of all directors.

New board elected Jan. 1, 1929

NOTE—In the column after "Name," give number of directors' meetings attended by each director since last examination. Number of meetings since last examination. ( ) Nov. 13, 1928

No. of shares owned	Name		Post-office address	Liability as payer (individual or firm) including overdrafts	Liability as indorser or guarantor	Occupation
68	Robert R. Armstrong	5	Passaic, N. J.			Doctor
500	F. N. Bidwell	8	" "			Vice-President
50	Morris Bunevich	8	" "			Retired
50	Lawrence E. Coen	6	Clifton, N. J.			Doctor
72	John D. E. Vries	8	" "			Iron Foundry
(*) 20	W. H. Elliot	7	East Orange, N. J.	10,000.00		Exec. Vice-Pres.
50	Micheluio Grasso	7	Passaic, N. J.	B/M 7,000.00 300.00	18,695.00	Steamship Tickets
200	Arthur S. Hughes	3	" "		44,500.00	Real Estate
			" "	3,250.00	45,447.17	Construction Business
68	M. J. Kane	3				
30	Anton L. Patterson	3	" "	17,850.00	10,031.67	Civil Engineer
50	John J. Roegner	6	" "	8,425.00		Attorney Mayor of Passaic
130	Albert W. Shaw	7	" "		8,000.00	Vice-President
50	John Schmidt	3	" "		8,438.63	Botany Worsted Mills

147	Benj. I. Sidloosky	5	"	"	8,716.87	10,601.08	Dentist
20	Michael Slavin	6	"	"			Retired
134	William P. Walsh	8	"	"	1,250.00	26,366.84	Jeweler and Real Estate
1256	Joseph J. Weinberger	6	"	"	M 13,197.17	C 51,016.67	Lawyer and City
					25,850.00	3,856.62	Counsel
64	Aaron Wilensky	8	"	"	C 10,661.00	53,400.00	Coal-Ice & Real Estate
2959							
	(*) Disqualified—stock holdings pledged.						
7.39	% of total shares			Total,	106,500.00	280,353.68	
				Add loans to officers not directors,	59,997.21	21,475.88	
	By-laws provide for			Gross total,	166,497.25	301,829.56	
	(25) directors			Less duplications,			
	Give Number 18			Net total,	166,497.25	301,829.56	

Total loans $4,730,805.87

Total of direct loans	CURRENT EXAMINATION Non-collateraled	Collateraled	Percentage of total to Capital and surplus	Loans and discounts	PREVIOUS EXAMINATION Non-collateraled	Collateraled	Percentage of total to Capital and surplus	Loans and discounts
To officers and directors $468,326.81	$359,145.97	$109,180.84	36+%	9.9%	$728,704.92	$98,295.62	63+%	14%
To corporations, etc., in which directors and officers are interested. None except endorsed.					105,120.89		8+%	1.9%

Percentages decreased through reduction in size of Board from 36 to 18 members.

Exhibit C. 1.

(182 b.)

INFORMATION IN CONNECTION WITH MANAGEMENT AND SUPERVISION BY DIRECTORS

1. State how often, and when directors meet as a board. Monthly—first Wednesday 4 P. M.
2. State fee paid each attending director. $5.00 now and then.
3. Do they authorize loans and discounts? Yes, in some instances.

3a. If so, in what manner? Recorded in minutes.

4. In what manner do they approve loans and discounts? Detailed list submitted to each Director and approved.
5. Are overdrafts read to the board of directors? No.
6. Are demand notes reviewed periodically? No. This unsatisfactory class of unsecured loans amounts to $106,000. They should be put on time basis.
7. Do they have an active executive committee? Yes.

7a. Is a record kept of their proceedings? Yes.

8. Does the board authorize the purchase of investments? In some cases.

8a. If so, in what manner? Recorded in the minutes.

9. In what manner do they approve the purchase of investments? Included in schedule submitted.
10. Do they have an active examining committee? Yes.
11. Give dates of examinations made during period covered by this report. Jan. 22, 1929 by McArdle & McArdle of New York City.
    Were they in accordance with statutory requirements? Yes.
12. Is a written report made to the board of directors? Yes.
13. Is report recorded in the minute book? Yes.
14. Does the examination include all asset and liability items? Yes.

14a. Does it include the trust department? Yes.

14b. To what extent do officers and employes assist? Do not assist.

15. Do the directors or examining committee approve expense account periodically, and if so, how frequently? Yes. Monthly by Directors.
16. Do minutes show consideration of report of last official examination? Yes.
17. Are important letters from Banking Department and replies thereto noted in the minutes? Yes.

Exhibit C. 1.

7. How often credited on demand accounts? Monthly. 7a. On savings accounts? Quarterly. 7b. Dates payable? J-A-J-O 1st
8. How many days' notice must be given by depositor in order to withdraw savings deposits? 30-60 days, not enforced
9. Are bookkeepers required to present cross-entries to an officer for approval? Yes.
10. How often are Christmas and Holiday Clubs balanced and by whom? Monthly by Mrs. McGowan, Teller.
11. Are bookkeepers (demand and savings) rotated at regular intervals? No.
12. Name any employee who receives deposits and makes entries in individual ledgers? None.

IN GENERAL

1. Is a proper record of all certificates of deposit, cashier's checks and certified checks issued, regularly kept in a book for that purpose? Yes.
2. Are any certificates of deposit, cashier's checks or bank drafts signed in blank? No. Are they countersigned? No.
3. How are certificates of deposit proven? List from Register 3a. How often? Monthly 3b. Are surrendered certificates properly cancelled? Yes. 3c. Are they properly filed for auditing? Yes.
4. Are receipts on file for cancelled certified checks returned to customers? Yes.
5. Does each teller keep a permanent record in ink of daily settlements? Yes. Record kept in pencil.
6. Is all business for each calendar day included in the proper account for that date? Yes.
7. Are the books so kept that the examiner can readily make a thorough and complete examination? Yes.
8. Is the bookkeeping and clerical system antiquated or imperfect? Give your views in this connection.

As previously reported bookkeeping and clerical systems satisfactory, but no close working arrangement is in effect in regards to Branch Offices which are conducted as separate institutions It is repeated that a system should be installed which keeps this office in daily touch with all branch office transactions, more especially those in reference to loans. Notwithstanding a promise at the date of previous examination that loans of given borrowers would be concentrated at one office and that loans of Directors, Officers and Em-

ployees would be carried at the Main Office, these liabilities, in a few cases, are still scattered.

10. Are erasures made of entries on the books? No.
11. Are any profits irregularly carried on the individual ledgers, in special accounts, or charged off the books? No.
12. Is there an itemized expense account kept and was it examined? Yes, examined.
13. Did you check the earnings? Tests made.

MAIN OFFICE

Exhibit C. 1.

(182 d)

BOOKS AND ACCOUNTS

GENERAL LEDGER

What form of general ledger is used? Loose Leaf Is a daily Statement taken? Yes. If so, from general ledger? Yes.

How often are accounts with correspondent banks reconciled? Is a satisfactory permanent record kept of such reconcilement?

Who reconciles accounts with correspondent banks?

If reconciled by general bookkeeper or assistant are they verified by another?

How often are loans and discounts proven? Monthly

Is the over and short account over-active? No. If so, should this matter be given special consideration by board of directors?

Are separate accounts carried for "Interest Received" and "Interest Paid"? Yes.

Give full explanation of any account carried elsewhere which properly belongs on the general ledger.

Rent account from Other Real Estate $504.76 carried in Individual Ledger.

DEMAND AND SAVINGS LEDGERS

1. What form of demand ledgers are used? Machine Posted 1a. Savings ledgers? Hand posted cards. 1b. Inactive ledgers? Machine posted.
2. How often are demand ledgers balanced? Semi-weekly 2a. Savings ledgers? monthly 2b. Inactive ledgers? none.
3. If statement system is used, so state and ascertain how often rendered. And by whom? Yes, monthly 3a Are they compared? Yes.
4. If statement system is not used, is a periodical effort made to secure pass-books for the purpose of balancing? 4a. In either case, is a notation made on ledger when statement is rendered or pass-book balanced? No.

*5. Give method of verifying savings or time deposit pass-books. Dual check system in operation

* (5) During a two day check of pass books, nineteen (19) accounts aggregating $8,120.52 were verified and found correct.

Exhibit C. 1.

6. Give rates of interest paid on demand accounts. 2-2½% 6a. Rates on savings accounts. 4%
7. How often credited on demand accounts? monthly and semi-annually 7a. On savings accounts? quarterly 7b. Dates payable? June 1, Apr. 1 July 1 and Oct. 1
8. How many days' notice must be given by depositor in order to withdraw savings deposits? 15 to 90 days, not enforced.
9. Are bookkeepers required to present cross-entries to an officer for approval? Yes.
10. How often are Christmas and Holiday Clubs balanced and by whom? Monthly, by Miss Jaffe.
11. Are bookkeepers (demand and savings) rotated at irregular intervals? Yes.
12. Name any employee who receives deposits and makes entries in individual ledgers? None.

IN GENERAL

---

1. Is a proper record of all certificates of deposit, cashier's checks and certified checks issued, regularly kept in a book for that purpose? Yes, except certified checks
2. Are any certificates of deposit, cashier's checks or bank drafts signed in blank? No. Are they countersigned? Yes.
3. How are certificates of deposit proven? Listing open stubs 3a. How often? Monthly 3b. Are surrendered certificates properly cancelled? Yes. 3c. Are they properly filed for auditing? Yes.
4. Are receipts on file for cancelled certified checks returned to customers? Yes.
5. Does each teller keep a permanent record in ink of daily settlements? No.
6. Is all business for each calendar day included in the proper account for that date? Yes, except Saturdays.
7. Are the books so kept that the examiner can readily make a thorough and complete examination? Yes.
8. Is the bookkeeping and clerical system antiquated or imperfect? Give your views in this connection. Modern

In a number of cases, Treasurer's Checks are signed by the Teller. This office is only a small branch and the presence of two officers should be sufficient for operation in the signing of drafts.

Exhibit C. 1.

During the period under review a note of H. Pohlemeyer endorsed by Edward F. Hackett, Vice-President of this institution, was charged off. This amount should be restored and notes bearing good endorsement should not be charged off without exhausting every means of recovery.

10. Are erasures made of entries on the books? Yes.
11. Are any profits irregularly carried on the individual ledgers, in special accounts, or charged off the books? See "General Ledger" above.
12. Is there an itemized expense account kept and was it examined? Yes.
13. Did you check the earnings? Tested.

MERCHANTS OFFICE

Exhibit C. 1.

(182 d)

BOOKS AND ACCOUNTS

GENERAL LEDGER

What form of general ledger is used? Loose Leaf Is a daily Statement taken? Yes. If so, from general ledger? Yes.

How often are accounts with correspondent banks reconciled? None Is a satisfactory permanent record kept of such reconcilements?

Who reconciles accounts with correspondent banks?

If reconciled by general bookkeeper or assistant are they verified by another?

How often are loans and discounts proven? Monthly, by Note Teller.

Is the over and short account over-active? No. If so, should this matter be given special consideration by board of directors?

Are separate accounts carried for "Interest Received" and "Interest Paid"? Yes.

Give full explanation of any account carried elsewhere which properly belongs on the general ledger. None

DEMAND AND SAVINGS LEDGERS

1. What form of demand ledgers are used? Machine Posted 1a. Savings ledgers? Machine Posted 1b. Inactive ledgers? Machine posted.
2. How often are demand ledgers balanced? Daily 2a. Savings ledgers? Monthly 2b. Inactive ledgers? None.
3. If statement system is used, so state and ascertain how often rendered. And by whom? Yes, monthly and as requested; all clerks. 3a. Are they compared? Yes.
4. If statement system is not used, is a periodical effort made to secure pass-books for the purpose of balancing? Yes. 4a. In either case, is a notation made on ledger when statement is rendered or pass-book balanced? No.

(*) 5. Give method of verifying savings or time deposit pass-books. See Below

6. Give rates of interest paid on demand accounts. 2-2½-3% 6a. Rates on savings accounts. 4%

Exhibit C. 1.

7. How often credited on demand accounts? Monthly 7a. On savings accounts? Quarterly 7b. Dates payable? J.A.J.O. 1st
8. How many days' notice must be given by depositor in order to withdraw savings deposits? 60 days to $500.—90 days over $500. not enforced.
9. Are bookkeepers required to present cross-entries to an officer for approval? Yes.
10. How often are Christmas and Holiday Clubs balanced and by whom? Monthly—Miss Breitner.
11. Are bookkeepers (demand and savings) rotated at irregular intervals? Not at present, because of new help. In ordinary circumstances bookkeepers are rotated each two months.
12. Name any employee who receives deposits and makes entries in individual ledgers? None.

(*)5) Pass books compared with ledger card, and signature on draft verified by clerk before funds are paid out. Deposits received by Receiving Teller are recorded by checker before passbook is returned to depositors, daily totals proved with teller's work and preserved as permanent record.

IN GENERAL

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1. Is a proper record of all certificates of deposit, cashier's checks and certified checks issued, regularly kept in a book for that purpose? Yes.
2. Are any certificates of deposit, cashier's checks or bank drafts signed in blank? No. Are they countersigned? Yes.
3. How are certificates of deposit proven? List open stubs 3a. How often? Monthly 3b. Are surrendered certificates properly cancelled? Yes. 3c. Are they properly filed for auditing? Yes.
4. Are receipts on file for cancelled certified checks returned to customers? In future receipts will be obtained.
5. Does each teller keep a permanent record in ink of daily settlements? Yes.
6. Is all business for each calendar day included in the proper account for that date? Yes.
7. Are the books so kept that the examiner can readily make a thorough and complete examination? Yes.
8. Is the bookkeeping and clerical system antiquated or imperfect? Give your views in this connection. Modern throughout.

Exhibit C. 1.

10. Are erasures made of entries on the books? No.
11. Are any profits irregularly carried on the individual ledgers, in special accounts, or charged off the books? No.
12. Is there an itemized expense account kept and was it examined? Yes.
13. Did you check the earnings? Tests made.

SERVICE OFFICE

Exhibit C. 1.

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BONDS AND MORTGAGES.

(1) Specify all mortgages not accompanied by proper documentary evidence of title, priority of the lien, certificates of value, and insurance policies when necessary; (2) mortgages which are not first liens, and mortgages taken for debt; (3) state on what percentage of valuation mortgage loans are limited; (4) whether interest is promptly collected, give details of loans in arrears of interest for one year or more, with the value of the property and the amount of interest due and accrued; (5) whether properties held under mortgage are inspected and revalued by the board or committee thereof, and how often, and when last done; (6) whether payments of taxes and assessments are verified at stated periods, and how verified; (7) whether the principal sums due on mortgages are verified, and, if so, how and by whom.

(1) Cheira Tiferes Yescoll Aushe Congregation — $9,000. Abstract recites prior liens.
Joseph L. Cohen — 6,000. do
Lena & Samuel Glasser — 10,000. do
Morris Gluck — 10,000. do
Passaic Hebrew Inst. — 12,000. Abstract due from Attorney—recent loan.
Max Trilling — 2,300. Abstract dated prior to recording. Same previous examination.
Michael Grasso — 7,000. With attorney. Additional mortgage being drawn.

It is stated that records and papers on file were complete prior to transferring assets to the Main Office and all mortgage loans recited above are first liens. New abstracts should be drawn at once.

(2) Helen & Max Grossman $4,500. Taken for debt—appraised $20,000.
Insurance certificate recites bank's mortgage as second.
Complete status of mortgage should be obtained.

(3) 50 to 60%

(4) Promptly collected except Celia Brumberg $9,700. in arrears 21 months—$1,018.50
Appraisal $16,300

(5) Yes, early in 1928/

(6) By presentation of receipted tax bills.

(7) Interest notices recite amount of unpaid principal; rendered by Vice-Pres. Ackerman.

Exhibit C. 1.

CONTINGENT LIABILITIES UNDER MORTGAGES SOLD WITH GUARANTEE $386,300.

In June, 1928, this Institution sold to the Equitable Title & Mortgage Guaranty Co., with their guarantee, numerous first mortgages aggregating $525,550. which the bank considered high type loans and had been carried in its assets for a number of years. Since that date mortgages have been paid which reduces the Contingent Liability to $386,300. at the present time.

The Title Company, at the time of original transaction, reassigned to the Passaic National Bank & Trust Company, as Trustee, these mortgages as security for their first mortgage collateral Trust Bonds due in five years and most of which are understood to be in hands of the public. It now develops that the Equitable Title disposed of the said Collateral Trust Bonds below par value, thereby suffering a loss of approximately $38,000.

An informal demand has been made on this Institution for payment of this amount, upon the theory the entire transaction was entered into to provide liquid funds, needed by the bank at the time. The claim seems to be unwarranted, as the Trust Company at time of receipt of these funds had ample reserves, and an investment account of $1,588,000. against which they were borrowing but $325,000. A more acceptable theory seems to be that Harry H. Weinberger, then directing the policies of both the Bank and Title Company was anxious to obtain control of this half-million dollars for some undisclosed purpose.

STOCKS AND BONDS

(1) State whether accessible to any one officer, etc., or under joint control.

No. Shares of Stock or Face Value Bonds.	Name of Corporation issuing Stock or Bonds. (Give rate of interest and year of maturity of bonds)			Amount at which carried on Books	Estimated Actual Market Value	State whether taken for debt previously contracted, or otherwise, and if interest, etc., is regularly paid.
	U. S. GOVERNMENT ISSUES					
13,750c	U. S. Liberty 4th	4¼s	1938	12,837.25	13,646.88	99.25 (M)
	MUNICIPAL ISSUES					
10,000	Union Beach, N. J.	6s	1932	10,000.00	10,200.00	102 (P. C.)
100,000	Port of N. Y. Authority	4s	1945	100,750.00	92,500.00	92½ (55,000 C. PA)
5,500	Wallington, N. J.	5½s	1929-39	5,500.00	5,500.000	100 (45,000 O)
				116,250.00	108,200.00	
	FOREIGN ISSUES					
10,000	Fiat (W. W.)	7s	1946	10,237.50	14,100.00	141
10,000	First Federal Foreign Invest. Trust.	5s	1932	9,675.00	9,100.00	91
5,000	Free State of Prussia	6s	1952	4,812.50	4,350.00	87
10,000	Int'l. Railways of Central Amer.	5s	1972	8,100.00	7,200.00	72
10,000	Irish Free State	5s	1960	9,675.00	9,650.00	96½
10,000	Montecation	7s	1937	10,012.50	11,250.00	112½
12,000	Republic of Poland	7s	1947	11,010.00	10,200.00	85
9,000	Rudolph Karstadet, Inc. 1st	6s	1943	8,800.00	7,740.00	86
				72,322.50	73,590.00	

No. Shares of Stock or Face Value Bonds.	Name of Corporation issuing Stock or Bonds. (Give rate of interest and year of maturity of bonds)			Amount at which carried on Books	Estimated Actual Market Value	State whether taken for debt previously contracted, or otherwise, and if interest, etc., is regularly paid.
	RAILROAD ISSUES					
10,000	Ann Arbor R. R.	4s	1995	8,537.50	7,200.00	72
5,000	Pitts Shawmut & Nor. R. R.	5s	1949	1.00	250.00	5 (Nominal) Int. in default
				8,538.50	7,450.00	
	PUBLIC UTILITIES ISSUES					
10,000	Amer. Gas & Elec. Co. Deb.	5s	2028	10,075.00	9,400.00	94
10,000	Amer. Natural Gas Corp.	6½s	1942	9,925.00	7,800.00	78
20,000	Associated Gas & Elec. Co. Conv.	4½s	1949	18,950.00	17,800.00	89 (10,000 O)
5,000	Brooklyn & Manhattan R. T. Co.	6s	1968	5,000.00	4,612.50	92¼
10,000	Cities Serv. Co. Deb.	5s	1969	9,725.00	9,050.00	90½
10,000	Dixie Gulf Gas Co.	6½s	1937	9,925.00	7,700.00	77
10,000	Hudson, Manhattan R. R. Co. Adj.	5s	1957	9,187.50	8,950.00	89½
5,000	Jersey City, Hoboken & Paterson St. Ry.	4s	1949	3,100.00	2,100.00	42
10,000	Kansas City Pub. Serv. Co.	6s	1951	9,400.00	7,600.00	76
5,000	Kings Co. Elevated R. R. Co.	4s	1949	4,200.00	4,012.50	80¼
5,000	Lexington Water Co.	5½s	1953	4,912.50	4,700.00	94
5,000	Mississippi Po. & Lgt. Co.	5s	1957	4,850.00	4,525.00	90½
5,000	New Rochelle Water Co.	5½s	1951	4,987.50	4,950.00	99
5,000	N. Y. Power & Light Co.	4½s	1967	4,787.50	4,525.00	90½
5,000	Philadelphia Co.	5s	1967	4,887.50	4,837.50	96¾
2,000	Public Service Corp. N. J.	4½s	1948	1,965.00	4,600.00	230
5,000	The Southwest Tel. Co.	6s	1947	4,962.50	4,600.00	92
5,000	Twin City R. T. Co.	5½s	1952	4,837.50	4,400.00	88
				125,677.50	116,162.50	

INDUSTRIAL & MISCELLANEOUS

5,000	Amer. Rolling Mills	5s	1948	4,962.50	4,775.00	95½
16,000	Botany Cons. Mills	6½s	1934	13,240.00	10,720.00	67
7,500	Capital Theater, Inc.	6s	7-15-29	7,500.00	7,500.00	Allowed
5,000	Chile Copper Co.	5s	1947	4,822.92	4,725.00	94½
500	First Mtge. Title & Ins. Co. N. J.	5½s	1931	492.53	500.00	100
5,000	General Amer. Invest. Co. Inc. (XW)	5s	1952	4,987.50	4,175.00	83½
24,000	Guarantee Mtge. & Title Ins. Co.	5½s	1937	24,000.00	24,000.00	
10,000	Metropolitan Chain Properties	6s	1948	10,475.00	10,100.00	101
10,000	National Trade Journals Inc.	6s	1938	9,725.00	8,900.00	89
5,000	Old Colony Inv. Trust	4½s	1947	4,600.00	4,250.00	85
5,000	Paramont Famous Lasky Corp.	6s	1947	4,962.50	4,900.00	98
10,000	Shell Pipe Lines	5s	1952	9,775.00	9,350.00	93½
5,000	United Biscuit Co. of Amer.	6s	1942	4,987.50	4,925.00	98½
25,000	Warner Sugar Corp. 1st ref.	7s	1939	23,000.00	26,437.50	105.¾
				127,530.45	125,257.50	

STOCKS AND BONDS

(1) State whether accessible to any one officer, etc., or under joint control.

No. Shares of Stock or Face Value Bonds.	Name of Corporation issuing Stock or Bonds. (Give rate of interest and year of maturity of bonds)		Amount at which carried on Books	Estimated Actual Market Value	State whether taken for debt previously contracted, or otherwise, and if interest, etc., is regularly paid.
	STOCKS				
	BANKS AND INSURANCE				
250 shs.	Bankers Trust Co. N. Y.	Par $10.	44,500.00	40,250.00	161
27 "	Firemens Insurance Co. Newark		1,525.00	1,053.00	30
25 "	Guaranty Trust Co. N. Y.		25,702.50	23,000.00	920
100 "	Manufacturers Trust Co. N. Y.	Par $25.	31,740.00	28,000.00	280
360 "	N. Y. Title Mtge & Guar. Co.		21,924.00	23,040.00	64
180 "	Paterson Savings Institution		21,400.00	45,900.00	255
			146,791.50	161,243.00	
	RAILROADS				
100 shs.	Missouri Pacific R. R.	Common	8,820.00	9,100.00	91
	PUBLIC UTILITIES				
200 shs.	Allied Power & Light Co.		16,015.00	15,800.00	79
100 "	Amer. Cities Po. & Lgt. Co.	Class "A"	2,094.00	6,900.00	69
8 "	do	" "B"	—	392.00	49
203 835/1000	Associated Gas & Elec. Co.	" "A"	10,075.00	11,368.00	56 (hold debs. conv. ctf.)
20 shs.	Essex & Hudson Co. Gas.		500.00	2,900.00	145
19 "	Hudson Co. Gas Co.		500.00	2,755.00	145
100 "	Louisiana Po. & Lt. Co.	6% Pfd.	9,975.00	11,200.00	112
100 "	National Po. & Lt. Co.	6% Pfd.	10,200.00	10,700.00	107
20 "	Newark Cons. Gas. Co.		500.00	1,880.00	94
50 "	South Jersey Gas & Elec. Co.	8% Pfd.	8,250.00	7,500.00	150
			58,109.00	71,395.00	

INDUSTRIAL & MISCELLANEOUS

100	shs.	Eastman Kodak Co.	Common	18,025.00	17,200.00	172	(0)
100	shs.	Freeport Texas Co.		6,417.50	4,600.00	46	
500	"	General Elec. Co. Ltd.		7,312.50	6,125.00	12¼	(0)
100	"	General Realty & Utility Corp.	6% Pfd.	10,030.00	9,300.00	93	(0)
100	"	Goodyear Tire & Rubber Co.		13,625.00	12,650.00	126½	
200	"	Granby Cons. Copper Co.		19,900.00	15,900.00	79½	
200	"	Reo Motor Car Co.		6,655.00	4,700.00	23½	
3	"	Rudolph Karstadt Inc. (Amer.)		—	54.00	18	
102	"	Sears-Roebuck Co.		19,262.50	16,473.00	161½	
50	Units	Selected Industries Inc.	50% Paid	2,487.50	3,000.00	60	
100	shs.	Starrett Corp.	6% Cum. Pfd.	4,925.00	5,000.00	50	
500	"	United Shoe Machinery Corp	Com.	9,028.82	31,500.00	63	
500	"	Amer. Inst'l Corp	(new)	37,087.00	32,375.00	64¾	
200	"	Forster & Wheeler		8,950.00	8,400.00	42	
				163,795.82	167,277.00		

STOCKS:

RECAPITULATION

			Net appreciation or depreciation
U. S. Government Issues	12,837.25	13,646.88	809.63
Municipal Issues	**116,250.00**	**108,200.00**	**8,050.00**
Foreign Issues	72,322.50	73,590.00	1,267.50
Railroad Issues	8,358.50	7,450.00	1,088.50
Public Utilities Issues	125,677.50	116,162.50	9,515.00
Industrial & Miscellaneous	127,530.45	125,257.50	2,272.95
Banks	146,791.50	161,240.00	14,451.50
Railroads	8,820.00	9,100.00	280.00
Public Utilities	58,109.00	71,395.00	13,286.00
Industrial & Miscellaneous	163,795.82	167,277.00	3,481.18
	840,672.52	853,321.88	12,649.36
Estimated Appreciation,	13,649.36		
	853,321.88		

Key:	Book Value	Market Value	
P. C.	$ 10,000.	$ 10,200.	With Prerogative Court, Trenton, to secure Trust Funds.
C. PA	55,375.	50,875.	With Guaranty Trust Co. N. Y. to secure funds to Port of N. Y. Authority
			No deposit at this date.
O	91,210.03	83,650.	In bank's vault, under joint access.
M	12,837.25	13,646.88	With Bank of Manhattan Co. N. Y. for safekeeping.
	*671,250.24	694,950.00	Remaining securities held by Guaranty Trust Co. of N. Y. for safekeeping
	840,672.52	853,321.88	

(*) During examination approximately $250,000.00 (par) were hypothecated with Guaranty Trust Co. for loans on bills payable of $200,000.

Since previous examination (11-13-28) profits were taken on securities sold of $97,059.17. In most cases the securities were sold outright but in one instance, that of Bankers Trust Co. N. Y. the shares were sold and repurchased the same day, reflecting a book profit of $24,700. The shares are carried at this time about $4,000. in excess of market value.

Exhibit C. 1.

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LOANS AND DISCOUNTS

The loans and discounts and other securities should be carefully verified and every discrepancy noted.

Previous Exam. 11-13-28

1,093,690.79	20%	Collateral,	22%	1,081,538.72
4,191,562.30	80%	Unsecured,	78%	3,649,267.15
5,285,253.09				
Total,				$4,730,805.87

Included in the above total are:

A. Bad debts as defined in the Law of 1899 (see remarks below), $

B. Other overdue paper (see remarks below),

Total, $136,087.49

SUMMARY OF PAST DUE

	Total Amount	Disallowed
Main Office	$82,490.51	$46,037.65
Service Branch	24,228.73	12,391.01
Merchants Branch	29,368.25	5,729.92
	$136,087.49	$64,158.58

PAST DUE: MAIN OFFICE:

Due Date	Maker	Endorser	Amount.
10- 2-28	Building Develop. Corp.	M. Watnick-M. L. Feenzig Very doubtful of collection and DISALLOWED	$ 1,600.00
8-25-28	Quinn & Brett	Joint note Counsel reports having collected $75.00. Believes balance will be paid "if he is able". $75 DISALLOWED.	150.00
11-23-28	Nathan E. Adelson 150 Broadway, N. Y. C.)	Borrower is associated with Harry H. Weinberger; note now in hands of a New York attorney for collection. This party was instrumental in making a market for New Jersey Bankers Securities Company stock. Nothing is known of his financial standing. DISALLOWED in full.	2,995.23
1-10-29	Jos. Wachter	Philip Richmond .....$	800.00
1-21-29	Philip Richmond	Single name	100.00

Exhibit C. 1.

Due Date	Maker	Endorser		Amount.
1-24-29	Stephen Huber	Philip Richmond	325.00	
		Reduced to judgment; No assets. DISALLOWED in full.		
				1,225.00
2- 7-29	Rose Hollander	Charles Hollander in bankruptcy; claim filed, recovery probematical. DISALLOWED in full.		1,750.00
2-21-29	W. W. Neill, Jr., Inc.	W. W. Neill, Jr.-H. R. Walker, Jr.-W. N. Gurtman .....$	6,625.00	
2-25-29	J. F. Mulsman	W. W. Neill, Jr.....	90.48	
2-28-29	H. R. Walker, Jr.	Single name	6,600.00	
5- 8-29	N. O. Beery	W. W. Neill, Jr.....	70.00	
				13,385.48
		All of the above have been reduced to judgment; supplementary proceedings failed to disclose any assets. Neill is in bankruptcy and claims have been filed with Receiver. Little hope of recovery. DISALLOWED in full.		
3-13-29	Joseph A. Moore	Single Name Bank holds $38.40 to be applied; balance may be collected slowly.		80.00
3-21-29	Albert A. Buchbinder	John V. Hanlon Reduced to judgment; no assets. DISALLOWED in full.		675.75
3-28-29	Yvette Levin	Morris Levin .....$	425.00	
4- 2-29	"	"	225.00	
				650.00
		Reduced to judgment; no assets. DISALLOWED in full.		
4- 1-29	Lucille Belfi	Emil P. Belfi Reduced to judgment; salary garnishee order obtained. This item should be written off and recoveries credited to Profit & Loss when, as and if received. DISALLOWED in full.		1,975.00
4- 4 29	Andela Bros.	Nick, and Walter Andela.....$	800.00	
5-13-29	"	"	1,800.00	
				2,600.00
		Judgment obtained on $1,800. item. Proceeding to reduce $800. item to the same status. No evidence of assets. DISALLOWED in full.		

Exhibit C. 1.

Due Date	Maker	Endorser		Amount.
4-18-29	John H. Winne	John H. McGuire Endorser is Passaic City Commissioner, who is believed to be good.	$	85.00
6- 3-29	Harol Gusciora	Michael Polack Suit in process. Endorser is a former Director of the Service Trust Company and believed to be good. Polack's statement 7-23-28 shows sufficient worth to meet this loan (Polack is also borrowing at the Service Branch through the Standard Brick Co., which line has increased since previous examination).		2,000.00
6- 3-29	Sofia Saxe	Solomon Saxe New Note with $100. payment tendered, but not acceptable to bank. Note handed to Counsel for suit. Saxe is borrowing, in addition to this amount, the sum of $8,400. and has promised heretofore to liquidate the line by refinancing his properties, in which he shows an equity, according to his statement of 11-26-28, of $320,000. This net worth is questioned by the management, who believes him to be badley "frozen up".		2,600.00
5- 6-29	Gootkin Const. Co.	A. and L. Gootkin Reduced to judgment; no assets. DISALLOWED in full.		325.00
		TOTAL THIS SECTION.....		$32,096.46

NOTE: The foregoing are all in the hands of the bank's attorney for collection, and the disallowances above shown are based on reports from his office.

4- 9-28	White Eagle Handkerchief Co.	Endorsed by 3 principals "	$ 1,000.00 1,100.00	
5- 7-28	White Eagle Handkerchief Co.	Corporation is bankrupt. Line working down by small payments through an endorser who is thought to be judgment-proof. Bank holds $400. cash to be applied, $200. of which amount has been received since previous examination. A slow work-out and may be Doubtful.		2,100.00

Exhibit C. 1.

Due Date	Maker	Endorser		Amount.
10-29-28	M. M. Kaminsky	Single name.	$ 502.58	
11- 1-28	"	"	757.88	
				1,260.46
		This item remains same as at previous examination date. As previously reported, the maker is said to be still confined in a hospital. No evidence is on file regarding his financial standing, but he is said to own a home in Plainfield, N. J. In the absence of collateral or definite information regarding his financial status the item is DISALLOWED.		
11-19-28	Beth Israel Hospital	Geo. W. Dren-Morris Joseph-M. Nemirov-I. Grossman	$ 5,000.00	
11-23-28	"	do.	5,000.00	
11-23-28	"	do.	15,000.00	
				25,000.00
		Harry H. Weinberger was formerly President of this organization, but has been succeeded by Hyman Kramer. At the time of previous examination it was stated that "a drive for funds in December was expected to liquidate all loans". The drive was a failure, as Weinberger was still President of the hospital. As at least Joseph and Nemirov are considered responsible, suit should be instituted against these endorsers at once. This item is one that should be cleared up promptly, as there are loans in other local institutions, and it is rumored, according to a Director of this bank, that all of the borrowed money did not reach the hospital's treasury. Harry H. Weinberger was President of the hospital at the time those loans were made.		
4- 1-29	Theo. J. Richmond Co.	Theodore J. Richmond		10,000.00
		This item is in dispute. Richmond claims this note was given at instigation of Harry Weinberger for the purpose of taking over bad debts of the Ada Dress Company, which were being carried at the Merchants Branch of this institution, for which he obtained certain receivables of the Dress Company. Subsequently the concern went into Receivership and Richmond was required to		

Exhibit C. 1.

Due Date	Maker	Endorser	Amount.
		return to the Receivers the amounts he had taken over. At this time a suit is pending against the bank, as having been made preferred creditors. Richmond denies receiving any benefit and refuses payment on that account. For the purpose of this examination this note is DISALLOWED. Richmond and his companies (note brokers) are, and have been, heavy borrowers from this institution for some time. He is closely associated with Weinberger.	
From 4-18-29 to June 3, 1929	M. Lapitsky (Trading as Greater New York Paint Company)	5 Receivables See "Doubtful" schedule for his entire line.	$680.73
6-10-29	Schlegel Mfg. Co.	Paul and C. A. Schlagel Company out of business. Item Doubtful and "Disallowed."	902.10
6-20-29	R. Glazer	R. B. Kantrowitz See "Doubtful" schedule for entire line of Kantrowitz.	2,110.85
2-25-29	Simon Furniture Co.	S. and J. H. Simon Company in bankruptcy. Loan taken over by endorser during examination. Amount of loan at maturity $1,800.00; reduced to present amount through payments vis Receivers dividends. Loan depends upon future earning capacity of individuals and is DISALLOWED.	1,349.38
6-10-29	Frank Fallace	Joseph Spada Bank holds $5,000. side collateral mortgage on vacant land; no other papers. In view of the lack of information concerning the parties and the absence of information regarding the mortgaged premises, the item is classed as doubtful, and is DISALLOWED.	5,269.25
	One (1) Item paid during examination		20.00
	Two (2) Items currently past due; considered Good but Slow		90.00
	Two (2) Items secured by collateral		1,611.28
		TOTAL THIS SECTION	$50,394.05
		GRAND TOTAL ALL PAST DUE NOTES AT MAIN OFFICE	$82,490.51

Exhibit C. 1.

SUMMARY OF DISALLOWANCES—MAIN OFFICE "PAST DUE"

Building Development Corp.	$ 1,600.00
Quinn & Brett	75.00
Wachter-Richmond-Huber	1,225.00
Yadelson	2,995.23
Hollander	1,750.00
Neill-Mulsman-Walker-Beery	13,385.48
A. A. Buchbinder	675.75
Yvette Levin	650.00
Lucille Belfi	1,975.00
Andela Brothers	2,600.00
Gootkin Construction Company	325.00
M. M. Kaminsky	1,260.46
Theo. J. Richmond Company	10,000.00
Schlegel Manufacturing Co.	902.10
Simon Furniture Company	1,349.38
Frank Faillace	5,260.25
TOTAL DISALLOWANCES IN PAST DUE AT MAIN OFFICE	$46,037.65

PAST DUE SERVICE BRANCH

Due Date	Maker	Endorser	Amount.
*3-26-29	Passaic Auto Brokerage Co., Inc.		$2,200.00
*4-9-29	Jessie Zacracki		1,000.00
*1-17-29	Harry & Matilda Aranowitz		225.00
*1-9-29	David & Lea Minsky		4,162.87
	(*) Original notes in hands of Attorney Joseph J. Weinberger who stated when verifications of these notes were made that he considered them doubtful. Therefore they are DISALLOWED.		
6-4-29	Jacob Bednarack		325.89
3-18-29	Paul Rose		4,477.25
	Vice President Shaw states he considers these notes doubtful. Therefore they are DISALLOWED.		
		TOTAL DISALLOWANCES	$12,391.01
		Six (6) others considered good (all current)	11,837.72
		TOTAL PAST DUE	$24,228.73

Exhibit C. 1.

SUMMARY OF DISALLOWANCES—PAST DUE—SERVICE BRANCH

Passaic Auto Brokerage Co.	$ 2,200.00
Zacracki	1,000.00
Aranowitz	225.00
Minsky	4,162.87
Badnarack	325.89
Rose	4,477.25
TOTAL DISALLOWED IN "PAST DUE" AT SERVICE BRANCH. .	$12,391.01

PAST DUE: MERCHANTS BRANCH

Due Date	Maker	Endorser	Amount
2- 4-29	Clara Schrievogal	C. W. Schrievogel	$ 392.46
2- 7-29	"	"	240.63
2- 1-29	Schrievogel Mfg. Co.	"	368.33
		Firm in difficulty. Endorser now working for a salary. Properties under foreclosure. Recovery doubtful and DISALLOWED.	
11-22-28	Anna Prebolsky	Peter Prebolsky	169.45
		Maker has promised to pay but line is considered doubtful.	
4-17-29	A. Rosenthal	See "Slow & Doubtful."	60.50
4-29-29	Joe Elias		11.00
		Formerly employed by Ada Dress Co. (defunct). Line being gradually reduced. Slow.	
6-14-29	J. Rapp	S. Eilen	228.46
		Maker makes small reductions. Outgrowth of Art Furniture Co. Slow.	
6-14-29	S. Ramer	Annie Ramer	3,808.27
		See "Slow & Doubtful."	
4- 8-29	Rubin Bros.	See "Slow & Doubtful."	3,460.80
4-11-29	Sonia and Moses Einfrank		353.50
		Judgment has been obtained. DISALLOWED	
9-27-28	J. Rudin & Q. Rudin		800.00
10- 1-28	"		800.00
		Rudin deceased and had transferred real estate just prior to death. They are endeavoring to set aside assignment. Collection doubtful. DISALLOWED.	

Exhibit C. 1.

Due Date	Maker	Endorser	Amount.
12- 4-28	Vandover Structural Iron Works.	Harry Odesnick, Robt. & J. Putchok Judgment obtained; collection doubtful. DISALLOWED.	300.00
1-29-28	Celia Goldberg	Isaac Goldberg Bankrupt. DISALLOWED	275.00
5-29-28	Tillie Krawiec	Josephing Jaworski-Jacob Serafin Judgments obtained. Serafin reputed to own property. Good but slow.	725.00
6-20-28	Passaic Scrap Metals	Peter Gleta Judgment obtained. Maker disappeared. Transferred property but will endeavor to have transfer set aside. Doubtful. DISALLOWED.	2,200.00
6-17-29	Andy & Rose Matcona	Originally $160. Line very slow.	149.25
5-29-29	Jennie Garber (wife)	Sam Garber	1,268.25
	Twenty-six (26) notes with various endorsers	"	6,358.28
	See "Slow & Doubtful."		
	Three (3) notes of Bertha & B. M. Weiner		2,268.68
	Three (3) notes of various makers endorsed by B. M. Weiner		1,365.76
	See "Slow & Doubtful."		

Continued.

MERCHANTS BRANCH

PAST DUE: MERCHANTS BRANCH

	Amount
Nine (9) Notes past due, considered good	$4,414.63
One (1) Note " " , renewed during the examination	325.00
One (1) " " " paid " " "	25.00
TOTAL of sixty-one (61) notes Past Due....	$29,368.25

Exhibit C. 1.

SUMMARY OF DISALLOWANCES—PAST DUE—MERCHANTS BRANCH

Schrievogel	$ 1,001.42
Einfrank	353.50
Rudin	1,600.00
Vandover Iron Works	300.00
Celia Goldberg	275.00
Passaic Scrap Metals	2,200.00
TOTAL DISALLOWANCES IN "PAST DUE" AT MERCHANTS BRANCH	$ 5,729.92

MERCHANT'S BRANCH

Exhibit C. 1.

(182 j)

DOUBTFUL AND SLOW PAPER AND LOSSES ON CURRENT LOANS

List doubtful and slow paper together with estimated losses other than previously itemized under past-due and bad debts. MAKE COMMENT UNDER EACH LOAN STATING WHY LOAN IS CONSIDERED SLOW, DOUBTFUL OR WORTHLESS. (If necessary, continue on extra sheet.)

Name of maker and remarks	Previous examination amount	Current examination amount	Slow	Doubtful	Loss
SUMMARY					
Main Office		$638,644.47	$310,805.80	$184,695.65	$ 13,000.00
Merchants Branch		126,888.51	35,306.59	45,164.54	38,169.61
Service Branch		34,800.00	34,800.00	0	0
TOTALS		$800,332.98	$380,912.39	$229,860.19	$ 51,169.61
MAIN OFFICE					
American Stores Company Endorsed Fred Skolkin (Clothing & House Furnishing Installments)	?	4,025.00		2,025.00	2,000.00
Statement shows entire net worth to be in receivables and mdse. of a questionable value. Has resorted to check kiting and carries an average balance of $1.					
Bodner Baking Co. (end. Samuel and H. J. Bodner)	12,700.00	12,689.58			
H. J. Bodner, Inc. (end. H. J. Bodner)	7,750.00	7,250.00			
Consolidated Agency, Inc. (end. H. J. Bodner and S. Feld)	2,500.00	2,300.00			
Samuel Bodner	0	5,200.00			
Sarah Bodner (end. Samuel and Herman Bodner)	4,203.07	3,801.52			
	27,153.07	31,241.10	21,691.10	9,550.00	
Lines to this group have increased since previous examination $4,088.03.					
The strength appears to be in Samuel Bodner (father) whose statement shows equities in local real estate of $200,000.					

Exhibit C. 1.

Name of maker and remarks	Previous examination amount	Current examination amount	Slow	Doubtful	Loss
Miserable deposit balances are maintained. The parties are badly tied up in real estate and a loss seems probable on the paper of the Consolidated Agency and H. J. Bodner, Inc., neither of which bear the endorsement of Samuel Bodner. The entire line is of an extremely slow character and is very undesirable.					
Capital Electric Company (end. I. M. Grossman)....	9,900.00	7,900.00			
I. M. and Rose Grossman..	3,500.00	3,250.00			
	13,400.00	11,150.00	3,150.00	8,000.00	
Corporate statement 7-31-28 shows net worth of $11,700., of which $5,700. is represented by Furniture & Fixtures. Current debt $18,700. Average deposit balance $50.					
Of the personal advance the sum of $2,500. was for the purpose of New Jersey Bankers Securities shares. 200 shares of which the bank holds as side collateral. Bank estimates loss as indicated. Louis Levy	12,000.00	12,519.97	12,519.97		
Owner of Central Supply Company (See Line in Schedule "A") and personal friend of Harry H. Weinberger. This loan was advanced for the purpose of purchasing 1,000 shs. of New Jersey Bankers Securities Stock, which the bank holds as side collateral. Levy claims loan was for Weinberger account—Weinberger says "no." In the meantime, the debt is increasing through additions of interest. Levy is, perhaps, good for this amount at this time, and he should be required to remove the loan.					

(continued)

Exhibit C. 1.

(182 k)

DOUBTFUL AND SLOW PAPER AND LOSSES ON CURRENT LOANS

List doubtful and slow paper together with estimated losses other than previously itemized under past-due and bad debts. MAKE COMMENT UNDER EACH LOAN STATING WHY LOAN IS CONSIDERED SLOW, DOUBTFUL OR WORTHLESS. (If necessary, continue on extra sheet.)

Name of maker and remarks	Previous examination amount	Current examination amount	Slow	Doubtful	Loss
MAIN OFFICE (continued)					
George W. Dren (former Director)	20,400.00	17,950.00	12,950.00		5,000.00
Net worth consists entirely of real estate, which is believed to be over-valued by his statement. The bank has taken a second mortgage of $10,000. covering property on Lexington Avenue, which amount, together with prior lien of $12,000. comprises the entire appraised value. Bank estimates a loss of $5,000. on this name.					
Joseph Garber (Realtor)		15,000.00	15,000.00		
A loan of long standing; no collateral; average deposit balance $8. The only information regarding his financial condition is copy of a statement furnished to another local institution in August 1926, which shows his assets to consist entirely of mortgaged real estate. Classed as "Slow"; may be "Doubtful."					
Otto W. Gortke (Bookkeeper at Merchants Branch)		1,005.51		1,005.51	
A loan to an employee for the purchase of 100 shs. of New Jersey Bankers Securities stock, which bank holds.					
Adolph Goldberger (end. Ruby Goldberger)		4,725.00		4,725.00	
Borrower is uncle of Harry H. Weinberger and loan was made for purchase of 300 shs. N. J. Bankers Securities stock, which bank holds as side collateral. No statement on file.					
Ruby Goldberger		2,842.72		2,842.72	
Cousin of Harry H. Weinberger and typist in local office of Messrs. Weinberger & Weinberger. Loan made for purchase of N. J. Bankers Securities stock.					

Exhibit C. 1.

Name of maker and remarks	Previous examination amount	Current examination amount	Slow	Doubtful	Loss
Golden-Price Shoe Company (end. M. and Louis Price and Mark Golden).....		2,075.00	1,075.00		1,000.00
Company out of business; endorsers making small payments.					
Anna Price (end. M. & L. Price)	6,150.00	7,300.00	2,300.00		5,000.00
Small payments. Main assets are merchandise (shoes) and small real estate equities. Bank has demanded that she obtain new mortgage on real estate and pay up her loan. This seems highly improbable, as present mortgage, together with this debt, equals the value she places on the property.					
Morris Lapitsky (Trading as Greater N. Y. Paint Company)		7,978.20	Direct.		
		1,928.11	4 Trade Notes.		
		680.73	5 Trade Notes (Past Due)		
		10.587.04		7,978.20	
A very weak name. Only collateral held is third mortgage on his business property on Monroe Street, the value of which is given at from $35,000. to $50,000. with prior lien of $26,000.					
Statement of 2-12-29 is a poor exhibit and indicates a loss in the previous year of about $42,000.					
Bank has been forced to take over Third Street property, on which they formerly held a mortgage to secure a $5,600 loan. This property now is carried on the books of the bank at $12,350.70. In view of these conditions the direct line is classed as "Doubtful."					
Sam Hilfman	11,600.00	10,700.00	7,000.00	3,700.00	
Subject is Treasurer of City of Passaic and an attorney. As previously reported, this name has caused losses in Passaic banks heretofore. Of the total, $7,000. is 2-name paper, which is considered good. Single name paper disallowed.					

(Continued)

Exhibit C. 1.

Name of maker and remarks	Previous examination amount	Current examination amount	Slow	Doubtful	Loss
This loan is purely an accommodation proposition made by H. H. Weinberger without collateral or other information as to his financial standing. The name has no value to the bank.					
MAIN OFFICE (continued)					
Hobelmann & McGanley...		18,500.00	18,500.00		
This paper is the result of loans made to the Bergen County Bus Company, which were carried at the time of previous examination at $18,000. and whose statement was then reported as "not a basis for credit." Hobelmann's statement shows a worth of $149,000., of which $70,000. is represented by his one-half interest in the Newark Petroleum Company (which has been in financial difficulties) and the balance in real estate equities.					
Deposit balances at present are $12. The line is evidently a work-out proposition and is classed as "Slow," but may be "Doubtful."					
Joseph A. Jackovics (Officer of this Company).....	9,543.33	7,393.28	Single Name Paper.		
		16,151.67	Collateral Loans (collateral value $12,100.00).		
		10,000.00	Collateral Loan at Service Office (collateral value $9,375.).		
		2,284.50	As endorser note of R. M. Jacovics (father).		
		3,756.73	Note R. M. Jacovics (father)—Note signed J. A. Jacovics, Atty. Single Name.		
		39,586.18		18,111.18	
Loan at Service Office paid off on date examination commenced. Jacovics has long been a borrower and his loans on collateral have been reported as short in the past. Nothing appears to be known of his financial condition except that "he is supposed to have some money."					
His loans do not appear to have been acted upon by the Board prior to their being made, as provided by the statutes.					

Exhibit C. 1.

Name of maker and remarks	Previous examination amount	Current examination amount	Slow	Doubtful	Loss
In view of the mystery surrounding his financial condition and that of his father, the amount in excess of collateral value is classed as doubtful and disallowed.					
R. B. Kantrowitz (Note Broker and Real Estate Speculator)	28,822.61	26,992.98		20,679.35	
Borrower has filed no statement since 1926. He carries a balance of $8. Little is known of his financial position, but he is thought to be badly tied up in real estate, most of which is carried in other names.					
His loans are of long standing and his true status has long been unknown.					
His borrowings have been criticised in the past. Excepting the notes on which the name of Jacob Jaffee appears, who is good, and which amount to $6,313.63, the line is classed as doubtful, and disallowed.					
Hyman Kramer (former Director)	107,093.35	96,698.73	96,698.73		
Subject is the owner of Kramer Lumber Company of Passaic and became deeply involved in apartment house construction in Elizabeth, N. J., which was reported in detail at previous examination date. No new figures are available and the situation remains much the same as previously reported.					
The local Lumber Company, which is the foundation for all loans, is reported to be making progress. The bank holds three 2nd mortgages aggregating $19,000. and 500 shares of the Lumber Company stock as side collateral.					
Fair reductions in his debt have been made since the previous report, and this institution, together with the other local banks, is convinced that if given time he will be able to work out of the present embarrassing position. For the purpose of this report the entire line is classed as slow. Part of it may be doubtful.					

(Continued)

Exhibit C. 1.

Name of maker and remarks	Previous examination amount	Current examination amount	Slow	Doubtful	Loss
MAIN OFFICE (continued)					
Harry Kuller		25,000.00	Single name; unsecured.		
		3,521.00	As endorser; two notes.		
		6,000.00	As endorser; Jefferson Finance Co.		
		15,000.00	Endorser; Central Investment & Mortgage Co. (Paid during exam.).		
		20,000.00	Endorser with J. Bacharach on Central Investment & Mtg. Co.		
		9,875.00	Collateral Loan Central Investment & Mtg. Co. (coll. value $10,500.).		
	64,738.24	79,396.00	79,396.00		
This is a long standing line with deposit balances far from compensating.					
Kuller is a close friend of Harry H. Weinberger and his past reputation seems far from enviable. He is reported as having been engaged in various lines of endeavor, ranging from wholesale auto thefts to wholesale importation of liquor. At the present time he is alleged to be in the note brokerage business, etc., etc.					
His statement as of August 1st, 1928, which is naturally questioned by the writer, shows net worth of $464,000. in Mortgages, Stocks and Real Estate equities. (He is a large holder of New Jersey Bankers Securities Company stock.) As recommended heretofore, this line should be collateraled in full, or, better still, completely eliminated.					
It is classed herein as slow, but may be doubtful. A very poor moral risk.					
Landish Studios, Inc. (endorsed Henry Landish)..		3,700.00	3,700.00		
A Rutherford borrower; no collateral; statement too old for consideration shows worth mainly in real estate in joint name with his wife. Line is gradually reducing. Deposit balance $50.					
Ruth Lentz (Employee of Bank)	2,612.68	2,651.45		2,651.45	
Loan granted for purchase of New Jersey Bankers Securities stock. Loan unchanged over the period except for an increase through interest additions. Nothing is known of her financial responsibility.					

Exhibit C. 1.

Name of maker and remarks	Previous examination amount	Current examination amount	Slow	Doubtful	Loss
Wendell Merrill (endorsed Catherine Merrill).....		1,440.00		1,440.00	
A local newspaper man with salary only. No. assets; no deposit account.					
Progress Club (Single Name)		18,000.00	18,000.00		
Loan stationary since October 1927. Bank holds as side collateral first mortgage for $18,000. covering property said to be worth well in excess of mortgage. Aside from 6% on the loan the bank derives little benefit, the Club carrying only a $250. deposit balance.					
Joseph W. Roberts (Officer of this bank) — Endorsed August H. Meny (brother-in-law)		7,209.55		7,209.55	
The loan is long standing and was granted, in part, for the purchase of N. J. Bankers Securities stock, 300 shs. of which bank holds as side collateral. No information on endorser, but he is thought to be good. The loan should be taken out.					
Solomon Saxe		8,400.00	Endorser on notes of Sofia Saxe.		
		1,725.00	As endorser for Thomas Saxe.		
		10,125.00	10,125.00		
A real estate tie-up. Deposit balances $225.00					
In addition to the above note for $2,600. now past due has been handed to attorney for suit. See "Past Due" schedule for general comments.					
Irving Vogel (Officer of this bank) Single name.....		3,164.93		3,164.93	
Loan made for purchase of N. J. Bankers Securities stock, 200 shs. of which are held by the bank as side collateral. Loan increasing through interest accumulations.					

(Continued)

Exhibit C. 1.

Name of maker and remarks	Previous examination amount	Current examination amount	Slow	Doubtful	Loss
MAIN OFFICE (continued)					
Waldman Realty Company (endorsed W. N. Gurtman and H. R. Walker, Jr.)...		4,700.00		4,700.00	
Other paper of this combination, appearing in "Past Due" has been reduced to judgment, with little hopes of collecting. A very doubtful item.					
Justesen - Walker Development Corp. (end. J. Justesen and H. R. Walker, Jr.)	9,000.00	8,700.00	8,700.00		
This obligation depends on the endorsement of Justesen, whose main assets are a one-third interest in the National Electric Company (also borrowers in this institution) and acreage in Great Meadows, N. J. His net worth is shown to be $38,400.					
Bank may collect through endorser, but process will be slow.					
Harry H. Weinberger					
State Finance Corporation..	48,902.00	48,167.00	Single Name (Notes for $44,902. formerly bore endorsement of H. H. W.).		
Greater Passaic Realty Company	23,352.70	23,348.80	Endorsed H. H. Weinberger.		
Gregorian Court	6,100.00	5,900.00	Endorsed H. H. W. and Louis Levy.		
Gregorian Court	10,037.32	8,720.13	Discounted for various endorsers.		
Biltmore Apartments	56,516.70	56,316.67	Endorsed Jos. J. Weinberger.		
Harry H. Weinberger, Trustee	6,093.00	347.51	Unsecured.		
Weinberger & Weinberger.	31,615.08	29,706.62	Unsecured.		
Weinberger & Weinberger.	None	19,197.17	Coll. Loan—1st Mortgage Coll.		
	182,616.80	185,703.90		85,958.35	

Average deposit balances of this group $5,000.00.

Very small reductions have been made over the period on most of the paper, but an additional collateral loan (new) increases the total obligation $3,087.10.

The only collateral held consists of two mortgages, one a second mortgage for $50,000. against the loan of the Biltmore Apartments and covers a Passaic Apartment House valued at $650,000. against which the West End Building & Loan Association holds a first mortgage of $350,000.; and a first mortgage of $20,000. covering a factory in Paterson appraised at $32,500. The balance, $115,703.90, rests on the names.

Exhibit C. 1.

Name of maker and remarks	Previous examination amount	Current examination amount	Slow	Doubtful	Loss

As reported at each past examination, no information regarding the financial position of these names is on file. No one about the bank seems to know anything about Weinberger's affairs and outside inquiry by the writer throws no light on the subject. His brother, Joseph J. Weinberger, who is now a member of the Board of Directors, and is considered a high type man, was called in and questioned regarding his brother's debt, and advised me as follows:

Re State Finance—He advised me that they own considerable New York real estate and a substantial interest in the Equitable Title & Mortgage Guarantee of Passaic, but gave no figures.

Re Greater Passaic Realty—He stated that this company is the owner of Main Avenue property in Passaic, with an equity of $60,000.

Re Gregorian Court—He said this is an apartment house in Passaic which cost $359,000., and on which there are two mortgages of $250,500.

Re Biltmore Apartments—This is secured by a second mortgage, as above stated. On the borrowings of Weinberger & Weinberger (the law firm) he furnished no information other than to say that he was worth ample to pay the loans.

He further stated that he would personally guarantee that the bank would suffer no loss, either directly or indirectly through any note of himself or his brother, and reiterated this in an open meeting of the Board of Directors.

Mr. Joseph Weinberger does not disclose his personal financial standing, and since these loans are of long standing, and were granted to assist Harry H. Weinberger in his personal projects, it is recommended that his brother, who believes they are all good, take this paper out of the bank and give the institution the benefit of the $185,000. in cash, which can be used to good advantage at this time.

In view of the age of this paper; the lack of definite information and collateral since its origin; the involved condition of Harry H. Weinberger's affairs and his general reputation; a provisional disallowance on the above line of credit of $85,958.35 is made. This amount is the excess over the second mortgage of $50,000. on the Biltmore Apartments line, the entire secured and unsecured debt of Weinberger & Weinberger and the paper of the Gregorian Courts endorsed and discounted by others.

James Wentworth (Employee of this bank)....	954.41			954.41	
Loan for the purchase of N. J. Bankers Securities Company stock, of which bank holds 100 shs. as side collateral.					
MAIN OFFICE TOTALS..	638,644.47	310,805.80	184,695.65	13,000.00	

Exhibit C. 1.

Name of maker and remarks	Previous examination amount	Current examination amount	Slow	Doubtful	Loss
N. Eilen					
Four notes with other endorsers	2,695.32	2,617.69			2,617.69
M. J. Schleider					
Twelve notes single name	8,430.01	8,703.50			8,703.50
John Bader	177.68	101.05	101.00		
Joseph Phillips	329.99	329.95			329.95
Joseph Safeir	111.67	66.00	66.00		
	11,744.67	11,818.19	167.00		11,651.14
This line is the outgrowth of the Art Furniture Co. (N. Eilen and M. J. Schleider) which is in receivership. Notes in four cases have only been reduced from $10. to $25.00 in two years. The other notes are increasing due to addition of interest, *Disallowed.*					
Nathan Balin					
Direct with Bessie	4,200.00	3,700.00	3,700.00		
Receivables	2,635.31	2,420.88	2,420.88		
	6,835.31	6,120.88	6,120.88		
Hay, Feed and Coal. Statement 9-25-28 shows Quick Assets $21,000. against $9,000. with Net Worth $32,000. Statements show very little headway. Line depends on real estate. Line steady since April 1927. Should show clean up or be secured.					
Charles A. Biczak					
Direct with Maria	9,300.00	9,700.00	9,700.00		
Manufacturer of Flags and Badges. Statement 11-28-28 with Quick Assets $6,000. against Current Liabilities $9,000. with Net Worth $69,000. in real estate. Line partly secured by a second mortgage of $6,000. with prior liens of $23,000. without supporting papers. Real Estate carried rather high. Appreciates real estate on statement. Line continuous since January 1928.					

Exhibit C. 1.

Name of maker and remarks	Previous examination amount	Current examination amount	Slow	Doubtful	Loss
Sam Garber					
Direct with Joseph	5,700.00				
Direct with Jennie	720.76	1,268.25			1,268.25
With Harry Cohen (employee)	4,024.98	4,024.98			4,024.98
Customers paper	9,512.79	1,183.10			1,183.10
Past Due Customers paper		6,358.28			6,358.28
As endorser	1,150.34	324.03	324.03		
	21,108.87	13,158.64			12,834.61
Formerly in livery business. Now in difficulty. Makers on notes can not be located and are disallowed. See "Other Real Estate."					
Josephson Bros.					
Samuel J. Josephson					
Direct	9,700.00	4,500.00	4,500.00		
Customers paper		997.25			
Cigar Manufacturer. Statement 1-1-29 shows Quick Assets $191,000. against Current Liabilities $48,000. with Net Worth $135,000. mainly in receivables. Proportion of sales to receivables very poor. Concern shows very little headway. Trade reports indicate slow. Statement shows high overhead. Line should be watched. Bank is demanding reductions. Line running since May 1928.					
Harry Kanter					
Direct		1,704.20			
With Gussie with S. Streit		1,507.75			
With Max Kanter		3,959.35			
Sec. by coll. value $4,928		5,000.00			
With Frost Kist Ice Cream Co.		1,827.60			
With B. Kramer		2,040.67			
As endorser		1,849.98			
	19,953.89	17,889.55		17,889.55	
Bootlegger. Statement 2-17-27 shows Net Worth $56,000. mainly real estate. Line being slowly reduced. His type of business demands that this loan be secured. Continual reductions should be made.					
H. Pohlmeyer					
With Tessie	748.45	688.59			688.59
Judgment obtained.					

MERCHANTS BRANCH

Exhibit C. 1.

(182 k)

DOUBTFUL AND SLOW PAPER AND LOSSES ON CURRENT LOANS

List doubtful and slow paper together with estimated losses other than previously itemized under past-due and bad debts. MAKE COMMENT UNDER EACH LOAN STATING WHY LOAN IS CONSIDERED SLOW, DOUBTFUL OR WORTHLESS. (If necessary, continue on extra sheet.)

Name of maker and remarks	Previous examination amount	Current examination amount	Slow	Doubtful	Loss
MERCHANTS BRANCH (continued)					
P. & P. Chemical Co.....	795.25	715.57			715.57
This institution participates with the Passaic National Bank & Trust Co. who holds collateral in warehouses. Line reduced $79.68 since previous examination due to sale of some collateral. No interest paid on loan since 3-31-27.					
H. Ramer					
Single Name		2,000.00		2,000.00	
With Amie		6,700.00		6,700.00	
With M. Wiesel		7,200.00			
With M. Wiesel & A. Adler		3,500.00		3,500.00	
With Joseph Adler		4,400.00		4,400.00	
Endorser		50.52			
	22,639.02	23,850.52		16,600.00	
Fruit Broker. Statement 12-31-28 shows Quick Assets $43,000. against Current Liabilities $33,000. with Net Worth $73,000. mainly real estate. On statement Ramer claims real estate in his name, whereas a statement of Ramer Bros. claim the real estate in joint name. On this misstatement direct line considered doubtful. D. and J. Adler are father-in-law and brother-in-law, respectively, of Ramer.					
S. Ramer					
With Anna		5,989.25			
With Sam Edelman & J. Weiss		1,100.00			
		7,089.25	3,544.63		3,544.63
Fruit and Produce. Statement 2-8-27 shows Net Worth in real estate. Bank held second mortgage of $5,000. with prior lien of $7,000. Property under foreclosure by first mortgage. Value of property					

Exhibit C. 1.

Name of maker and remarks	Previous examination amount	Current examination amount	Slow	Doubtful	Loss
questioned and full recovery under mortgage doubtful. 50% of line is disallowed.					
A. R. Rosenthal	3,061.50	3,122.50			3,122.50
Party bankrupt; collection doubtful.					
Rubin Bros.		3,110.80			3,110.80
David & Isidore Rubin					
Produce. First mortgage is foreclosing. Bank, who holds second mortgage of $4,000., is going to let it go rather than bid in property.					
David cannot be located and line is *disallowed.*					
Passaic Crueller & Doughnut Bakery.					
End. H. Birman & H.					
Schleyen	8,000.00	7,600.00	7,600.00		
H. Schleyen & H. Birman	2,450.00	3,350.00	3,350.00		
	10,450.00	10,950.00	10,950.00		
Statement 11-17-27 shows Net Worth $22,000. in plant and equipment. Poor cash position. Line high. No headway. Endorsers tied up in real estate. Need working capital. Line steady since May 1925.					
Wavid Wein					
Direct with Edith	4,000.00	3,000.00		3,000.00	
Trade paper	5,294.72	4,624.99		4,624.99	
As endorser	2,450.00	3,050.00		3,050.00	
	11,744.72	10,674.99		10,674.99	
Wholesale and retail Dry Goods. Statement 10-31-28 shows Quick Assets $75,000. against Current Liabilities $20,000. with Net Worth $79,000. in inventory $45,000. estimated, and real estate $19,000. Statement shows variation in surplus due to estimated value of inventory. A corrected statement showing actual values should be obtained through a reputable certified accountant. This party does not bear a very high reputation as he has been under indictment as a receiver of stolen goods. It is also noted that property is in wife's name. Line is classed as doubtful and should be secured. Line steady since April 1927.					

Exhibit C. 1.

Name of maker and remarks	Previous examination amount	Current examination amount	Slow	Doubtful	Loss
B. M. Weiner					
With Bertha	1,136.61	2,268.68			2,268.68
As endorser	5,048.96	3,252.60			3,252.60
	6,185.58	5,521.28			5,521.28
Produce. Statement 1-27-28 shows Net Worth $37,-000. mainly real estate. This party is said to be a bootlegger. Maintains no account. Loss expected.					
John A. Maloney		103.00			103.00
No account. Line disallowed.					
TOTALS, MERCHANTS BRANCH		126,888.51	35,306.59	45,164.54	38,169.62

(Total each column)

MERCHANTS BRANCH

Exhibit C. 1.

(182 j)

DOUBTFUL AND SLOW PAPER AND LOSSES ON CURRENT LOANS

List doubtful and slow paper together with estimated losses other than previously itemized under past-due and bad debts. MAKE COMMENT UNDER EACH LOAN STATING WHY LOAN IS CONSIDERED SLOW, DOUBTFUL OR WORTHLESS. (If necessary, continue on extra sheet.)

Name of maker and remarks	Previous examination amount	Current examination amount	Slow	Doubtful	Loss
SERVICE BRANCH					
A. Saltzman & Wife ..... Lawyer	5,300.00	5,300.00	5,300.00		
Endorsed Bernard Saltzman (son) Statement shows a non-liquod position with a Net Worth of $21,000. entirely in real estate. Reductions should be made at all renewals and not allowed to run indefinitely without any signs of liquidating.					
S. Sarapin, Wife & Son.... Builder	14,150.00	13,750.00	13,750.00		
Only a $400. reduction since the previous examination (Nov. 1928). Statement on file a year old shows a Net Worth of $97,000. in real estate equities. A new statement should be obtained. Should make larger payments at time of renewals.					
Paul Troast & Wife ..... with brother-in-law in Contracting business. (L. Mahoney).	6,000.00	5,750.00	5,750.00		
No statement on file. Second mortgage for $2,500. on file as side collateral (supporting papers with attorney). Small reductions since previous examination along with low average balance indicate shortage of working capital. Statement should be obtained along with Profit & Loss analysis.					
Frank E. Walker, Inc. .... Real Estate, Bergen County.	10,000.00	10,000.00	10,000.00		
Endorsed F. E. Walker H. R. Walker R. J. Randall					
Statement shows a non-liquid position. Net Worth of $63,500. in real estate. Strength said to be H. R. Walker. Reductions should be insisted upon.					
TOTALS—SERVICE BRANCH .		34,800.00	34,800.00	—0—	—0—

Exhibit C. 1.

(182 l)

LOANS EXCEEDING THE LIMIT PRESCRIBED BY LAW.

NAME	AMOUNT	REMARKS

N O N E.

LINES OF CREDIT.

A. Set out under separate heading all loans subject to criticism. Make comment under each loan.	What % of total loans.	241%
B. List all loans to Building and Loan Associations.	What % of total loans.	Nominal
C. List all loans to Municipalities.	What % of total loans.	None
D. STREET LOANS		Nominal

Name	Amount	Endorsers or Collateral

S U M M A R Y

	Schedule "A"	Schedule "B"	Schedule "C"	Schedule "D"
Main Office	919,310	65,276.00	None	110,000.00
Service Branch	103,745.84	None	None	None
Merchants Branch	139,155.76	None	None	None
TOTALS	$1,162,211.72	65,276.00	—0—	110,000.00

SCHEDULE "A" (Main Office)

John F. Dolan (Cashier of Bank of Nutley, N. J.)	14,560.00	Bank holds collateral to cover line; also endorsement of Nathan Miller on $4,060.00. Line put on by Vice-President Elliott. A Nutley borrower engaged in extensive stock transactions. His account is strictly a loaning one and the bank derives no benefit from the same. The loan has been called for payment. Paid.
Willard H. Elliott Joint note with Geo. M. Disbrow, Jr., J. Earl Skillman, Edward H. Yerg.	10,000.00	Individuals are well regarded and show substantial equities. However, they reside outside this community and have borrowed this money for the purpose of acquiring the assets of the Lautz Manufacturing Company, a chemical concern of Newark. The loan has no place here.
Frederick C. Lautz Single Name.	1,000.00	This party is identified with the group next above described and was the former owner of the Chemical Company. He files no statement. An undesirable loan for this bank.

Exhibit C. 1.

(182 m)

LARGE LINES.—(Continued)

Name	Amount	Security
	"A"	
MAIN OFFICE—(continued)		
Charles E. Fatzinger (Hackensack)	2,000.00	Endorsed Benjamin Dubin. Maker formerly of Nutley and a friend of Elliott's. He carries no account with this bank and furnishes no information as to his financial responsibility. A poor piece of commercial paper.
W. Frank France	6,460.00	Collateral—Collateral worth $3,650.00 (partly covered during examination).
	400.00	Single Name
	7,000.00	As endorser and discounter of note of Geo. T. Hannen. France is a relative of Mr. Elliott and a salesman living in West Orange. In the Hannen transaction he appears to have been a "dummy", as his check was immediately turned over to Hannen for the amount of the loan. Hannen admitted France to be a stranger to him. A second mortgage on vacant land secures the Hannen obligation, which he has promised to meet within the next ten days. The entire line is valueless to the bank and should be completely eliminated forthwith.
	13,860.00	
Alexander Koswick	15,000.00	Direct
	9,049.50	Robert S. Edden note (unknown to bank). This borrower is also a principal of Mr. Elliott. His $15,000. loan became due June 28th and is now in "Suspended Paper" account, his full renewal note having been declined. His statement shows ample worth to cover the advance and he should be called upon to take it out.
	24,049.50	
Peter Morris	2,000.00	Single Name. Another Nutley friend of Elliott's, now engaged in business in Rutherford. His statement shows him to be worth $18,500., of which $15,000. consists of Notes Receivable in payment for his business in Nutley. His notes have no place here.
Benjamin Alter	9,500.00	Previous examination $10,000.00
Max Storch	3,007.63	" " 3,515.53
A. & S. Realty Co. (endorsed Alter and Storch)	17,000.00	" " 21,000.00
		" " 18,500.00

Exhibit C. 1.

Name	Amount	Security
Passaic Merchants Finance Co. (endorsed Alter and Storch)	15,500.00	Net reduction $8,007.90 since previous examination. Principals are engaged in the real estate and loan brokerage business. The main asset of the group is real estate equities, listed, according to old statements, at $407,000. These lines have long been in the bank and are of a slow moving character. The reduction in the line, as above shown, should continue.
	45,007.63	
Robert Asher	10,298.33	Borrows entirely on small Receivables made payable to Streicher Manufacturing Company, which company he and his sons own. Asher states he takes these notes in lieu of salary with endorsement of corporation. The corporation is a heavy borrower in other banks and it may be that this method is resorted to with a view to improving their financial statements. This type of credit advance is undesirable.
Bernhardt Auto Supply Co.	26,000.00	Endorsed Emil and Charles Bernhardt (Last Exam. $24,000.) Statement of 3-9-28 shows worth of $91,000. to consist mainly of realty equities ($71,500) Line has been continuously on the books since March 1928. A capital loan.
Brook Avenue Land Co. End. Philip Miller; Harry Stein; and Arthur Hughes (Director)	39,000.00	Last Examination $46,500. Average deposit balance $8,000. Parties are considered high grade, but file no statements.
J. J. Brumberg	3,033.92	(Includes man and wife paper $2,526.25) Brumberg also borrows $20,818.07 on collateral which is subject to criticism (See schedule elsewhere). Interest on mortgage loan to Celia Brumberg 21 months in arrears. His average deposit balance is $800.

Exhibit C. 1.

(182 m)

LARGE LINES.—(Continued)

Name	Amount	Security
	"A"	
MAIN OFFICE—(continued)		
Central Supply Company (Louis Levy, Pre. & Owner) Plumbers materials.	24,121.12	Receivable of low average amount. Statement 11-30-28 shows net worth of $762,000., all of which is represented by Recievables and Merchandise. Credit reports show curtailment of his account in the trade on account of frozen receivables. Other local banks have likewise cut their lines. This company is also selling their notes to a local finance company, owned by Theo. Richmond, who, incidentally is a C. P. A. and furnishes the financial statement above referred to. Bank is holding locked balance of $10,000. See "Slow & Doubtful" schedule for personal line of Louis Levy. The entire line had been called for payment by Vice-President Elliott by July 1.
Commonwealth Mortgage Co. Endorsed William P. Walsh (Director) and 3 others.	23,250.00	Last Examination $24,250.00 Corporate net worth consists entirely of equities in vacant land in Clifton and a Passaic apartment house. A slow capital loan with deposit balances not commensurate.
Dyer-Kane Company (Road Builders)	28,250.00 13,197.17 1,303.25 42,750.42	End. E. E. Dyer and M. J. Kane (Director)—J. J. and D. J. O'Leary also endorse $25,250. of this amount. As endorser and discounter Hazelview, Inc., a concern of Gurtmann & Walker, now in bad repute. As endorser J. J. O'Leary Company. Concern is in the Road Building business and shows Capital & Surplus of $171,000. composed entirely of real estate and equipment. The direct line has been materially reduced since previous examination and the company's Surplus shows a substantial increase in the past year. However, the company is without liquid working capital and the line appears to be w character —especially the Hazelview note.

Exhibit C. 1.

LARGE LINES.—(Continued)

Name	Amount	Security
Grand Rapids Furniture Co.	20,000.00	Endorsed Benny and Leon Stein, and Louis Hack.
Benny Stein	7,750.00	Endorsed Leon Stein and J. A. Hack.
Benny Stein	21,000.00	2nd mtg. collateral of $42,000.
Julius Mack (At Merchants Office)	8,400.00	Endorsed Benny Stein.
	57,150.00	This group is engaged in the installment furniture business and their net worth consists mainly of Accounts Receivable, the value of which is questioned. Bank's only collateral is several mortgages (all junior liens) with papers incomplete for proper appraisal. The line has been reduced a small amount, after Executive Committee recommended that it be cut. The line is long standing and deposit balances are not commensurate. Trade reports show collections "slow". Line should be further reduced.
M. Grasso (Director)	18,695.00	Statement shows ability to furnish collateral. He should do so.
Edw. F. Hackett (Vice-Pres.)	5,898.28	Endorsed Matilda Hackett (wife)
	3,966.08	" Wm. A. Hackett (brother)
	3,500.00	Secured by B. & M. for same amount.
	8,690.00	Endorser with J. J. Brumberg on D. & H. Realty note.
	22,054.66	
Matilda Hackett (wife of Edw. F. Hackett)	2,270.00	Single Name; unsecured.
	4,474.56	Collateral Loan—Coll. value $4,100. (Short)
	6,745.22	
TOTAL HACKETT LINE	28,799.88	Neither Hackett nor his wife supply statements. Both have long been borrowers on this basis. The only security held is valued a $7,600, leaving an unsecured balance of $21,199.80. Borrowings are largely on account of real estate deals consummated long ago with Brumberg and for the purchase of New Jersey Bankers Securities Co. stock. The entire amount of this liability should be secured with high grade collateral or removed from the bank.

Exhibit C. 1.

(182 m)

LARGE LINES.—(Continued)

Name	Amount	Security
	"A"	
MAIN OFFICE—(continued)		
Emil Moskowitz	14,100.00	Jointly with Hausman and Kempelman.
	25,000.00	As endorser Jersey Carpet Company.
	39,100.00	Moskowitz is substantial, according to his statement of 2-10-28, but largely in real estate equities. The first item above is of long standing, $11,000. remaining since 1926. The Carpet Company's statement, which concern is operated by a son of Moskowitz, shows Capital and Surplus of $127,500., which, likewise, is mainly real estate equities. The corporation is without working capital and their current debt exceeds their net worth nearly 2 to 1. The lines have increased from $28,000. at the time of previous examination and do not appear to be first grade bank credits.
Harry Joseph (Former Director)	7,000.00	Single Name.
	17,400.00	As endorser Robert H. Buchans.
	17,000.00	As endorser with M. Morris (Lions Realty Co.)
	5,500.00	As endorser S. Rosenstein
	7,588.91	As endorser with 6 others—John Kelly (demand note dated 11-28-25, original amount $13,654.85)
	54,488.91	Joseph is disconnected from the institution entirely, excepting for his loans. They have been here a long time. His statement the only one on file, shows real estate equities of $330,000. His liability has been cut only $4,312. since previous examination in November and deposit balances of the group are negligible. Joseph is said to be a close friend of Harry H. Weinberger his loans having come in through the former Service Trust Co. The line is an extremely slow one and is entirely unsecured. It should be removed from the bank.
Jankel Laffer	11,500.00	Endorser on notes of Dora Laffer (wife) Previous examination $15,500. Statement shows ample worth to cover loan, but from reports obtained he is engaged in an illegal traffic. An undesirable line of credit.

Exhibit C. 1.

LARGE LINES.—(Continued)

Name	Amount	Security
Alexander Laiks (Former Director)	10,600.00 4,175.00 14,775.00	As Maker. As endorser. This borrower has also disconnected himself from the institution except for his loans. His deposit balance now stands at $8.96. His statement shows sufficient worth to cover the above debt and his loans should follow his bank account.
Nathan Lenz	8,500.00	Endorser on note of Rosie Lenz. Previous Examination $9,500. Net Worth shown to be all in real estate, consisting namely of a one-third interest in New York City property. Borrower former saloonkeeper; now in real estate business. Has appearance of slow loan.
Davis Levine (Storage warehouse)	13,900.00	Endorser on notes of Sadie Levine. Statement 10-16-28 shows net worth $73,000. all in real estate and other fixed assets. Line has increased $4,500. since previous examination date. A capital loan and should be secured.
M. Liebson (Physician-Real Estate-Mortgage Investments) Reliance Realty Company	34,000.00 3,000.00 37,000.00	Endorsed J. Liebson (Former exam. $34,500.) " M. Liebson and M. Loeb (Former exam. $5,000.) This is strictly a real estate line. Has been a steady borrower for years without collateral. Reductions are now being demanded of $500. per month, which should continue at even a greater speed if the loan is to be liquidated inside of six years. A speculative proposition.
National Electric Co. (Electrical Supplies)	20,500.00 304.55 20,804.55	Endorsed W. O. Mentnick—J. Justesen. Discounter Waldman Realty Company. Statement 12-31-28 showing net worth $49,000. places current debt equal to net worth. Concern list $9,000. from operation in 1928. Should be watched.

Exhibit C. 1.

(182 n)

LARGE LINES.—(Continued)

Name	Amount	Security
	"A"	
MAIN OFFICE—(continued)		
John J. O'Leary Company	31,592.50	Direct.
(Contractors)	2,900.77	Trade Paper
		Total liability last examination $37,865.10.
	34,493.27	Statement Dec. 1928 with Capital & Surplus $160,-128. shows current debt $197,000 and Quick Assets $176,000. Net worth all in real estate and equipment.
		Company maintains miserable deposit balances and advances are classed as Capital loans.
		Bank holds as side collateral a first mortgage of $30,000. on a tract of land in Passaic, the value of which is not given. The O'Leary's are large stockholders in the Clifton Piece Dye Works, which concern carries substantial deposit balances at the Service Branch.
Anton L. Petterson		
(Director)	17,850.00	Direct.
	10,031.67	As endorser—Various notes.
		Total last examination $28,525.73.
	27,881.67	Very small reductions; long standing line.
		As previously reported, he files no statements but is considered "good".
Atlantic Acceptance Corp.	38,270.26	As discounter and endorser of notes of various local individuals and companies, many of which names also borrow direct from the bank and whose lines are subject to criticism.
	50,000.00	Collateral loan secured by 274 shs. Lebanon National Bank of New York Stock.
Theo. Richmond Company	15,000.00	Direct—Endorsed Theo. Richmond.
	5,000.00	As endorser—Wm. Harris (Newark Attorney.)
	108,270.26	Richmond is a Passaic accountant who is also engaged in the note brokerage business at rates said to be exorbitant. He is closely identified with Harry H. Weinberger and interested in the New Jersey Bankers Securities Company and in the Lebanon National Bank of New York (a financial institution owned by the N. J. Bankers Securities Company).
		Richmond personally endorses all paper and his statement shows a net worth of $320,000., mainly

Exhibit C. 1.

LARGE LINES.—(Continued)

Name	Amount	Security
		in stocks of the above named companies and in local enterprises which he heads. Richmond has refused payment on another item of $10,000. past due since April 1st. See "Past Due" schedule for details. Richmond's borrowings have decreased $89,000. since previous examination, $77,000. of which was on his collateral loan, the collateral being surrendered in proportion. Richmond's clientelle are not of the highest type risks and the line, as a whole, is unsatisfactory. It had been called for payment on July 1st by Mr. Elliott, but at the close of this examination is still here. The bank enforces deposit balances through a Certificate of Deposit for $10,000.
Saul E. Scher	12,900.00	Endorser on Cadillac Realty Corporation (his company).
	5,000.00	Endorser on Community Jewel Shop.
	17,900.00	His statement (two year old) shown him to be worth over $300,000. in mortgages and real estate. Bank holds no collateral. Appears to have large borrowings in other local banks. Although his indebtedness here has been reduced $8,000. since previous examination, the line is undesirable. His deposit balances approximate $400.
John Schmidt (Director)	8,438.63	As endorser on four notes (Previous Examination $8,741.00). A very slowly reducing line, unsupported by financial statement. A letter on file dated 6-5-29 states "own home worth $20,000., mortgaged for $9,000."
Winfield T. Scott	34,300.00	With W. W. Scott. Line is a long standing one and has been reduced but $200. since previous examination. His statement 8-14-28 showing a net worth of over $400,000. indicates ability to furnish collateral. He should be called upon to do so or pay the loan in full.

Exhibit C. 1.

(182 n)

LARGE LINES.—(Continued)

Name	Amount	Security
"A"		
MAIN OFFICE—(continued)		
Emanuel Shavick (Paterson Banker & Lawyer)	5,053.08	As endorser on paper of his companies and associates. Line reduced somewhat since previous examination, but he neither carries deposit account here nor furnishes statement. The line should be eliminated.
A. W. Shaw, Jr. (Vice-Pres. & Director)	8,000.00	As discounter of note of Russell S. Shaw. Loan is payable on demand and dated 2-10-28. No payments. No statements. He agreed to pay it forthwith.
B. I. Sidlovsky (Director)	8,716.87	As maker with Dr. R. Peres.
	10,601.08	As endorser various notes.
	19,317.95	Line reduced since previous examination through payment of collateral loan $13,000. Sidlovsky is a dentist by profession, but seems to be engaged also in the note brokerage business and in realty operations. The line has long been in the bank without his supporting statement.
Philip Wechsler (Department Shote)	4,600.00	As endorser on wife's note.
	1,350.00	As endorser Style Silk Company (his company).
	5,950.00	Statement 12-31-28 showing worth $101,000. consisting of large merchandise account, is questioned. Bank believes the name weak and would like to see it paid off. Reduced from $7,800. sincc previous examination.
Aaron Wilensky (Director)		Endorser Wilensky Bros. Company
	51,500.00	" Oscar Wilensky.
	1,900.00	Collateral Loan—Coll. value $10,600. (No margin).
	10,661.00	Statement shows borrowers to be tied up with real estate. Sufficient net worth is shown to cover the debt, but liquidation of loans depends on ability to dispose of properties. He carries a $400. average balance. Has appearance of a loan for the purpose of real estate speculation.
	64,061.00	

Exhibit C. 1.

LARGE LINES.—(Continued)

Name	Amount	Security
Silk Service Corporation (#180 Broadway, N. Y. City)	54,014.11	Concern is liable to bank for this amount through Acceptances which the institution has guaranteed. It originates through letters of Credit for imports of silk, all of which has been released on trust receipts. Jackovics, an officer of this bank, was formerly connected with the Silk Company, and through him this credit was established. Bank holds no collateral, but have been furnished with a guarantee of P. F. Magagna, Jr., President of the Silk Company; he files no statement. A statement of the Silk Service as of 11-30-28 shows Capital & Surplus of $86,900. with current debt of $157,000; Quick Assets (including "Receivables" $176,000. and " Inventories" $45,000.) of $229,000. The obligations assumed by this institution are high on the basis of this statement, and as this concern carries no deposit balances with the institution; and the bank itself being unfamiliar with the silk trade; the account, a New York City one, should be discontinued. (continued)
TOTAL OF SCHEDULE "A" MAIN OFFICE	919,310.12	

Exhibit C. 1.

182 n)

LARGE LINES.—(Continued)

Name	Amount	Security
SCHEDULE "A" SERVICE BRANCH		
Berger & Small Auto Supplies	6,000.00 578.09 6,578.09	Direct. Receivables. Old statement dated 7-31-28 shows Net Worth $12,800. in Receivables and Mdse. This position could change in a few months and a new statement obtained particularly when the line last examination showed only—Direct $2,250. and Receivables $768.54.
Black & White Cab Company Taxie Cabs	6,600.00	Direct. Endorsed Edward & Robert Koplaw. No statement on file. Last examination showed $7,650. Chattel Motge. on file dated 11-6-25 on all cars (16). Considering the date, these cars are of little value, and at a forced sale would bring a very nominal amount. At least 20% reductions should be made at time of renewals. Vice-President Shaw states strength lies in the endorsers.
Dunkerley & Co. Pianos-Radios-Victrolas	6,650.00	Direct. Statement shows a Net worth of $144,000 made up mainly of Receivables and Mdse. The borrower also has a line and does business in other Passaic banks. Where receivables make up so large a part of the net worth, this form of assets is uncertain and further advances watched.
Goodwear Union Clothes Shop Mfgs. & Retailers	5,800.00 425.00	Direct Receivables. Last examination: Direct $1,450.00 Receivables 903.07 $2,353.07
Rosenthal & Mengel	6,225.00	Statement shows note proportion of inventory to total assets and especially to the quick assets and the absence of receivables. If a cash business (retail) it appears that cash is being used for extensions and not for liquidation of debt. This may be a seasonable condition. If so, the loaning officer should find out the fact, if he does not already know.

Exhibit C. 1.

LARGE LINES.—(Continued)

Name	Amount	Security
H. N. Greenfield	3,400.00	Direct.
Real Estate—"WINE"	6,300.00	Receivables. Signed by Esther Newman; endorsed
	9,700.00	by A. L. Tinton. Vice-President Shaw states this will be paid July 8 when it is due. Admittedly to be a dealer in wine but on *Government permit.* This is admitted a hazardous business and Mr. Shaw states no further advances are being made. It is intended he reduce regularly.
Intercity Transportation		Direct
Co.	406.13	Receivables. Signed by B. O. Reinaner (Given for
Emil Bernhardt, Pres.	2,030.33	stock in Company.)
		Receivables. Signed by Anthony Alesso (Given for
Theo. Richmond, Treas.	304.60	debt to Co.)
		Receivables. Signed by Kron-Dorfman-Solomon for
	1,218.40	the debt to Co.)
		Receivables. Signed by Bernard Kron (Given for
	507.67	debt to Co.)
		Receivables. Signed by Etna Security Co. End. also
	7,107.33	by Richmond & Jos. Krowitz. (Given for debt to Co.)
	7,107.30	Receivables. Signed by Bernhardt & Richmond
	18,681.70	Money advanced to Company. Last examination showed Direct $710.85. Receivables $8,989.88. Statement shows Capital $113,092 and Surplus $83,964. with the assets entirely in Busses. The Company maintains an average balance of $7,000. Vice-President Shaw states the line is being reduced gradually. Considering the net worth is chiefly in a rapidly depreciating asset, large payments should be made at time of renewals.
Wash Passaic Co.	15,095.02	Receivables.
"Wash Cars"		Statement date Jan. 1929 shows net worth of $111,000. in new and used cars also Parts and Fixtures and Equipment On lines of this sort statement should be rendered oftener than yearly, and all large receivables financed through a Finance Co. Line is continuous. Last examination $13,668.

SERVICE BRANCH

Exhibit C. 1.

(182 m)

LARGE LINES.—(Continued)

Name	Amount	Security
"A"		
SERVICE BRANCH—(continued)		
A. Liebson Officer-Ral Plumbing Supply Co., Passaic	5,000.00	Direct. Endorsed M. Liebson No reductions since previous examination and no statement. Carried good average balance. Reductions should be made periodically and not allowed to run indefinitely.
Meyer Salow & Wife Wholesale Milk Dealer	16,400.00 2,250.00 18,650.00	Direct Receivables. No statement on file. Vice-President Shaw states borrower owns considerable property. Statement should be obtained.
Standard Brick Co. Notes signed by Thomas-May & Michael Polack	8,535.27	Direct. No statement. Strength said to be in the makers of the note. An increase of $3,000. in the line since last examination warrants that a statement be filed along with a Profit & Loss analysis. Polack is also endorser on Past Due of $2,000. carried at the Hobart Office.
TOTAL SCHEDULE "A" Service Branch.	103,745.84	
SCHEDULE "A" Merchants Branch		
Rose Curtain Co. (Novelty Curtain & Panels)	6,500.00	$4,500. Endorsed Benj. and Samuel Susswein 2,000 As discounter for Specially Linen and Curtain Shop, an affiliation. Statement 6-30-28 shows Quick Assets $57,000. against Current Liability $33,000, with Net Worth $31,000. in equipment $8,000. and receivables. Poor cash position. Current Liabilities exceed Net Worth. Need working capital. Line last examination $8,100. Steady line since October 1926.
Benjamin Susswein	4,150.00	Direct with Rose. Statement 6-1-27 shows Net Worth $36,000. mainly in affiliated companies. Statements show too fluctuating surplus. Probably guesswork in statement. Trade reports indicate slow line. Line should be watched. Steady line since April 1928.

Exhibit C. 1.

LARGE LINES.—(Continued)

Name	Amount	Security	
Zimmer Trunk Co. (Wholesale Trunks)	8,562.33	$6,860.00 1,702.33	Direct endorsed Harry Stager & Saul Zimmer as endorser.
			Statement Jan. 4-1928 shows net worth $40,000. mainly in real estate which is in the name of Saul Zimmer. Comparison of statements show a continual loss in surplus for last few years. Line last examination $9,639.86. Line steady. Need working capital. Line should be secured.
	119,943.43		A total of seventeen notes predicated to real estate and considered slow.
TOTAL SCHEDULE "A" Merchants Branch	139,155.76		

MERCHANTS BRANCH

LARGE LINES—(Continued)

SCHEDULE "B"

MAIN OFFICE

Name	Amount
Franklin Nutley, N. J.	35,000.00
Main (J. J. Roegner, Pres.)	18,276.00
Mutual	12,000.00
TOTAL SCHEDULE "B"	65,276.00

Main Office

SCHEDULE "B" Service Branch — None

SCHELUDE "B" Merchants Branch — None

SCHEDULE "C"

SCHEDULE "C" Main Office — None

SCHEDULE "C" Service Branch — None

SCHEDULE "C" Merchants Branch — None

Exhibit C. 1.

LARGE LINES.—(Continued)

Name	Amount	Security
SCHEDULE "D"		
MAIN OFFICE		
$215,000.00. through Guaranty Trust Co. of New York; Less: $115,000. for a/c of customers.	110,000.00	This money has been called during course of examination and bank has been compelled to borrow to extent of $200,000., secured by their investment bonds.
TOTAL OF SCHEDULE "D" Main Office	110,000.00	
SCHEDULE "D" Service Branch	None	
SCHEDULE "D" Merchants Branch	None	

Exhibit C. 1.

(182 o)

LOANS AND DISCOUNTS IN GENERAL

State (1) general character of loans; (2) whether well distributed; (3) general character of collaterals; (4) whether corporations or enterprises in which directors or officers are interested borrow to an undue extent; (5) any large liability of director or officer as maker or endorser describe fully; (6) state whether all paper claimed by the bank as its property, including collateral, is properly endorsed or assigned to it; (7) give current rate. of interest obtained; (8) does the bank place paper with other banks and to what extent; (9) is it liable in any way; (10) does the bank take loans to accommodate other banks and to what extent; (11) is sending bank in any way liable; (12) are financial statements obtained from borrowers whose unsecured indebtedness aggregate 1% or more of the combined capital and surplus of the institution; (13) is the discounter column in Liability Ledger kept in balance with the General Ledger, and how often proved?

(1) Non-liquid. Real Estate equities form the basis on most loans while still others are just friendship loans.

		This Exam.	Previous Exam.
(2)	Except in a few instances.		
(3)	Readily marketable	$ 485,591.62	$ 438,493.13
	" " Coll. Loans	110,000.00	175,000.00
	Local—Passaic National Stock	139,247.11	85,485.00
	Bonds & Mortgages	241,120.98	364,460.17
	Lebanon Nat'l. Bank, N. Y.	44,795.00	—
	Local issues based on book values	56,001.77	27,948.24
	Miscellaneous	—	2,295.25
	Unsecured (due to short collateral)	4,782.24	—
		$1,081,538.72	$1,093,690.79

(4) No.
(5) See lines of Hughes, Kane, Weinberger & Wilensky.
(6) See "General Exceptions" to collateral loans.
(7) 6%
(8-11) None.
(12) In most cases. On several large lines this is not true and the bank's general information is very meagre.
(13) Yes. Proved regularly at each office separately. No central liability file.

Exhibit C. 1.

LOAN CLASSIFICATION

	This Examination		Previous Examination	
Past Due	$ 136,087.49	2.9%	$ 102,129.78	1.9%
Slow & Doubtful	800,332.98	16.6	634,855.46	12
Other Lines subject to criticism	1,162,211.72	24.5	830,840.58	15.7
Secured and Unsecured without special comments	2,632,173.68	56.—	3,717,427.27	70.4
	$4,730,805.87	100 %	$5,285,253.09	100 %

OVERDRAFTS. $653.89

State (1) whether habitually granted and (2) what amount is unsecured; (3) verify amount at date of examination and (4) compare amount stated in last report of condition with amount shown by the books for same date; (5) list those remaining in bank six months or longer; (6) itemize overdrafts of officers and directors, and (7) state whether habitual.

(1) Frequently in small amounts.

(2) Hobart $ 8.75
Merchants 629.40
Service 15.74 TOTAL $653.89 Disallowed $330.23

(3) Verified.

(4) Compared.

(5) At Merchants Branch Nov. 2-28 Louis Helln reduced to $33.22; March 9-29 Phil Janone $297.01

(6-7) Vice-President Hackett's account short $27.15 on 3-25-29; made good following day.

Exhibit C. 1.

COLLATERAL LOAN EXCEPTIONS

MAIN OFFICE:	Loan	Value of Collateral	
Loans short collateral—			
F. France (friend of Elliott)	6,460.00	3,650.00	$1,900. paid during examination.
G. A. Lauffer	1,000.00	875.00	
H. C. Magee	2,101.52	2,100.00	
A. T. Martin (Treasurer of Federal Trust Company of Newark, N. J., who also has an unsecured obligation in the amount of $659.86) (Friend of Elliott. Paid during exam.) **Borrower gives values covering $944. B/L stock. No acknowledgment from Star B/L covering 5 shs., or from Alliance B/L covering 5 shs.	15,788.24	**14,441.00	and 5 shs. B/L stock with no valuation on hand
Joseph A. Jacovics (VICE-PRESIDENT)	16,151.67	12,100.00	
Frank Costello	2,525.42	2,400.00	
Aaron Wilensky (Director)	10,661.00	10,600.00	
E. J. Moffett Officer Parisi Trust (Newark) Friend of Elliott.	2,537.92	2,500.00	on Bid price of 50 Parisi Tr. Co. stock.
Loans short Margin—			
J. T. Boylan (friend of Elliott) Paid during examination.	5,200.00	5,600.00	
Central Investment & Mtg. Co.	9,875.00	10,650.00	
M. Storch	2,500.00	2,650.00	
A. R. Tornqvist (SAME LAST EXAM.)	14,000.00	14,025.00	
Richmond Realty Company by Lloyd R. Cooper (friend of Elliott) (paid during examination)	6,500.00	6,925.00	

Bond & Mortgage Exceptions—

R. G. Benson, Jr.	$19,795.75	—$20,000. Second Mortgage. Insurance on file in favor of 1st mortgagee only. Loan is an old one and has been increased from $16,250.67 at time of previous examination. He carries no deposit balances.
Pine Lesser	5,787.40	—$8,000. 2nd mortgage. No insurance.
Hilda Olsen	1,116.68	—$2,000. 2nd mortgage. No insurance.
Weinberger & Weinberger	13,197.17	—$20,000. 1st mortgage. Abstract prepared by borrowers.
Charles Levy	13,000.00	—No abstract; no appraisal.
S. Pellegrino, et als.	13,500.00	—2nd mortgage. No appraisal; no insurance.
I. Schletter	3,150.00	—2nd mortgage. No insurance.

Exhibit C. 1.

EXCEPTIONS TO COLLATERAL LOANS (continued)

MAIN OFFICE

Bond & Mortgage Exceptions (continued)

Harry Stein	$6,000.00	2nd Mortgage. No insurance.
Benny Stein #2	21,000.00	2nd Mortgage. No insurance.
Clara Wolfsohn	1,900.00	No abstract.
Loans secured by stock of the Lebanon National Bank of New York (a controlled company of the New Jersey Bankers Securities Company)		
Atlantic Acceptance Corp.	$50,000.00	274 shs. held. Other collateral worth $10,000.
Central Inv. & Mortgage Co.	9,875.00	15 shs. held. Other collateral worth $7,500.
Loans on securities without a ready market.		
J. F. Walsh	$1,000.00	100 shs. New Jersey Bankers Securities stock. (SAME LAST EXAMINATION)
J. V. Smeaton	27,500.00	Collateral worth $25,554.00 and 1,000 shs. New Jersey Bankers Securities stock.
J. S. Shedden (friend of Elliott)	14,900.00	Collateral worth $13,900.00 and $3,000. Pakihmer Realty Company 6s of 1931 and $3,000. Kramer Hosiery 6s of 1936.
J. J. Brumberg	20,818.07	Collateral worth $19,900.00 and 100 shs. New Jersey Bankers Securities stock; 20 shs. Mayflower Marine Insurance Company of Newark (Par $10.); and 20 shs. Mayflower Fidelity Insurance Company of Newark (Par $10.)
J. J. Breslawsky	2,727.13	20 shs. New Jersey Engineering & Supply Company stock (Par $100.). Borrower is Treasurer of company.
J. F. Minturn	1,206.20	25 shs. Ocean County Title Co. 25 shs. New Jersey Development Co.
J. J. Magovern (friend of Elliott) (Paid during examination)	23,347.90	Collateral worth $12,110. and 300 shs. Ungerleider Financial Corporation Stock.
Ada M. Wentz	5,500.00	250 shs. Portable Machinery Company stock (Par $100.)

$25,535.30....TOTAL of above loans dependent upon this class of securities.

Exhibit C. 1.

EXCEPTIONS TO COLLATERAL LOANS (continued)

MAIN OFFICE

General Exceptions

Atlantic Acceptance Corpn.	$50,00.00—	$10,000. Certificate of Deposit of this bank payable to Corporation; not endorsed. Stock Certificates #557/558 for 97 shs. Lebanon National Bank of New York, held as collateral to this loan, are not signed by President of the bank.
Paid		
J. F. Rean	3,500.00—	No Power of Attorney Covering Passaic National Bank stock.
Otto E. Seifert	356.89—	No Power of Attorney covering B/L shares.
Otto E. Seifert	70.39—	do.
Paul Julick	253.79—	No acknowledgment from B/L Secretary covering shares pledged at collateral.
James Donohue	4,061.33—	15 shs. Main B/L Ass'n. stock in his name, as Trustee. Not proper collateral for personal loan.
Charles Cammatra	505.00—	Stock Certificate of the Cities Service Company pledged as collateral to this loan is registered in name of Marian Corradino and another certificate is registered in name of Anna Corradino. Hypothecation certificate authorizing the pledging of this stock appear to have been signed by the same person.

COLLATERAL LOAN EXCEPTIONS

MERCHANTS BRANCH

Short collateral or Margin

Harry Kanter	$5,000.00—	Value of collateral $4,928.
Brumberg Agency, Inc.	1,000.00—	" " " 970.
D. J. Feldman	1.786.76—	" " " 970.82
		Also 20 shs. Amer. Realty Sec. ?
		10 shs. John Marshall B/L ?
Matilda Hackett	4,474.56—	Value of collateral $4,100.
G. & J. Schwartz	2,150.00—	" " " 2,173.81

In a number of cases, valuations on Building & Loan shares have failed to be obtained from the Associations.

In a number of cases, loans were found to be short collateral or insufficiently margined. It is suggested, in view of the condition of the Stock Market, that all collateral should be renewed more frequently and current quotations watched.

MERCHANTS BRANCH

Exhibit C. 1.

COLLATERAL LOAN EXCEPTIONS (continued)

SERVICE BRANCH

Jos. A. Jocovics (Vice-Pres. Hobart Tr. Co.)	$10,000.00	—Collateral value $9,375.
Nosh Passaic Co.	2,944.47	— " " $2,300.
	These loans were paid during examination.	
Ball Optical Co.	6,000.00	—Collateral: 5 shs. prepaid B/L stock $1,000. in name of Mrs. Daniel Davis—no authority to Hypothecate. 7 shs. B/L stock $1,086.79 in name of Nellie Davis, Trustee for Robert Charles Davis—no authority to hypothecrate. Other collateral worth $4,600.

Loans Secured by Local Securities

E. A. Bristor	$7,346.40	—Collateral: 24 shs. Passaic Herold—Common. 24 " " " —Preferred.
D. H. Lone (Clerk in Weinberger's office)	3,675.40	—Collateral: 380 shs. State Finance Corporation (A Weinberger Co.)
Weinberger & Weinberger	6,093.00	—Collateral: 83 shs. Equitable Title Mtge. & Guaranty Co. of Passaic. (A Weinberger Co.)

These securities are not marketable and it was impossible for the Examiner to determine their value as no financial statements are on file.

SERVICE BRANCH

Exhibit C. 1.

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DUE FROM OTHER BANKS.

		Brought forward,
Central Hanover Bk. & Tr. Co. N. Y. U.	2,853.04	2%
Bank of Manhattan Co. "	46,234.83	2%
Guaranty Trust Co. "	24,043.34	2%
Paterson National Bank of Paterson	384.10	Collection a/c
National Bank of America "	5,872.55	2%
Passaic National Bank & Trust Co.	22,315.88	2%
	$101,703.74	

1. State what rate of interest received on balances. Stated above.
2. Were the balances reconciled by communication with the banks? Yes.
3. State whether amounts due are on open accounts or on Certificates of Deposit, and if so, whether secured by collateral. Open.

BANKING HOUSE.

State (1) whether suitable and convenient; (2) for what other purpose used; (3) whether carried at fair value on books; (4) whether insured; (5) if deed is in name of bank; (6) whether vault and safe are good and secure; (7) whether banking room is used by any other banking institution; (8) whether furniture and fixtures are worth book value; (9) give assessed valuation and gross rentals.

See Comparative schedule on Banking House figures (next page).

No change has been made in this account since the properties were written up $675,000. in the early part of 1928.

Owing to the excessive cost (1/10 of 1% value), appraisals by competent appraisers in Newark, Passaic and Paterson were not availed of by Examiners at this date but opinion of outside disinterested parties indicate that carrying value is approximately $415,000. in excess of fair value.

For the purpose of this report the Banking Houses are allowed at $750,687.50.

(See Final Comment).

BANKING HOUSE PROPERTIES.

	Book Value Present Examination	Book Value Previous Examination	1929 Assessments Land	1929 Assessments Building	Insurance Building	Insurance Furn.&Fixt.	Gross Annual Rents	Mortgages
Main Office	$ 715,687.50	* 715,000.00	133,800.	102,500.	175,000.	17,000.	13,500.	
Service Branch	350,000.00	350,000.00	57,700.	55,700.	130,000.	—	2,050.	$130,000. Held by
Merchants Branch	100,000.00	100,000.00	5,000.	16,500.	40,000.	5,000.	600.	Prudential Ins. Co. (Matures Aug. 4-1931)
TOTALS	1,165,687.50	1,165,000.00	196,500.	174,700.	345,000.	22,000.	16,150.	

* Increase of $687.50 represents charge by Public Service Company for changing Elevator Motor at Main Office Building.

WRITE-UP AT TIME OF CONSOLIDATION Jan. 1928.

Main Office	$500,000.
Service Office	100,000.
Merchants Office	75,000.
	$675,000.

FURNITURE & FIXTURES

Balance previous examination	$71,112.00	
New Equipment purchased	178.00	
		$71,290.00
Less: Proceeds of sale of equipment at Service Branch	155.00	
PRESENT CARRYING FIGURE		$71,135.00
Insurance Carried (as above)		22,000.00

In view of lack of provision for depreciation over past years and the delapidated condition of furnishings and equipment in all but the Service Office a provisional disallowance of 50% is made on this account ($35,000).

Exhibit C. 1.

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CAPITAL STOCK.

State (1) whether stock certificate book is properly kept; (2) whether surrendered certificates are properly assigned, cancelled and attached to stubs; (3) whether any stock certificates are signed in blank; (4) whether stock ledger is properly kept; (5) whether amount of stock outstanding was verified; (6) give certificate number of last certificate issued; (7) whether bank owns any shares of its own stock, if so, how and when acquired; (8) whether bank holds any of its own shares as collateral, if so, how acquired.

(1) Yes.
(2) Yes.
(3) No.
(4) Yes.
(5) Yes. 4,000 shs. of $25. par value outstanding. See schedule attached.
(6) Permanent Ctf. Hobart Trust Co. #134—$25. par.
7-8) None ascertained.
30140 shares registered in name of New Jersey Bankers Securities Co.

DUE TO OTHER BANKS.

Lincoln Trust Company of Paterson..... 260.76 Carried on Demand Ledger.

260.76

1. Rate of interest paid on balances. As above.
2. State whether amounts due are on open account or on certificates of deposit, if so are they secured by collateral. Open account.
3. Whether balances were reconciled by communication with the bank. Yes.

DEPOSITS.

1. If bank holds any U. S. Government, State, County or Municipal Funds, list balances and state rate of interest paid.
   Demand—15 Accounts totaling $280,329.61 2%
2. List large balances (in proportion to total deposits) subject to check, or in Time Department, giving rate of interest paid.
3. List Certificates of Deposit outstanding; give rate of interest paid.
   (2) Demand—5 Accounts totaling.....$188,505.36 2-3%
   New Jersey Bankers Special..... 71,775.65
   $260,281.01
   Time—3 Accounts 34,472.14 4%
   (3) See Schedule attached.

Exhibit C. 1.

CAPITAL STOCK.

Shares Outstanding, viz:

Stock Ledger #1 The Hobart Trust Company $25. Par Value.
Temporary Certificates
#257 for 10 shs. n/o Alex Leiks
267 " 30 " n/o M. Bunevich (Director)
271 " 40 " n/o M. Grasso (Director)
278 " 20 " n/o E. Hait

TOTAL....100 shs. 100

Stock Ledger #2 The Hobart Service Trust Company $25. Par Value.
Temporary Certificates 36,089

Stock Ledger #3 Hobart Trust Company $25. Par Value.
Permanent Certificates 3,811

TOTAL SHARES OUTSTANDING 40,000

NOTE: Fififtеen permanent certificates fully executed aggregating 780 shares on hand, undelivered; includes shares of Directors.

Receipts covering 210 shares delivered, not on file.

Since previous examination there appears to have been no attempt to clear up missing papers in connection with transfers of stock in names of the New Jersey Bankers Securities and Estate of W. O. Bush.

SUMMARY OF CERTIFICATES OF DEPOSIT

Hobart Office $80,486.72
Merchants Branch 32,564.30
Service Branch 13,402.95

TOTAL $126,453.97

CERTIFICATES OF DEPOSIT—DEMAND

HOBART OFFICE

No.	Date	Name	Rate	Amount	Key
2914	10-10-23	Sophie Fondilier	0	$ 100.00	
3183	3-5-25	Geo. D. Rosenstone	0	250.00	A
3324	12-14-25	Dr. Frank Uehlein	0	293.40	
3479	8-11-26	J. B. MacMullen	4%	4,000.00	
3619	1-10-27	Bodner Baking Co.	0	2,800.00	A
3654	2-28-27	J. C. Ryder	4%	5,000.00	
3674	3-31-27	William Wilson	0	400.00	A
3689	4-22-27	Morris Cohen	0	400.00	A
3727	6-27-27	H. Wessels	0	1,000.00	A
3770	8-23-27	P. A. Vasilyk	0	100.00	A

Exhibit C. 1.

3773	8-29-27	Jos. K. Seraydarian	0	200.00	A
3790	10-11-27	Jos. Salomon	4%	4,500.00	
4392	5-31-28	Capital Electrical Co., Inc.	0	750.00	A
4405	6-27-28	Saul Scher	0	1,750.00	A
4421	8-1-28	Herbert L. or Katherine Merrick	4%	2,000.00	
4432	9-11-28	Osher Gordon	4%	200.00	
4451	10-17-28	" "	4%	600.00	
4453	10-26-28	Michael Struss	4%	200.00	
4458	11-1-28	Emanuel Shavick	0	318.65	A
4466	12-5-28	Samuel Bodnee	0	1,000.00	A
4476	12-19-28	Atlantic Acceptance Corp.	0	10,000.00	C
4481	12-31-28	Independent Electrical Co.	4%	1,401.67	
4487	1-23-29	Young Men's Hebrew Ass'n	4%	4,000.00	
4493	3-2-29	Michael Struss	4%	300.00	
4495	3-6-29	Osher Gordon	4%	300.00	
4502	3-14-29	N. H. Ables	0	1,000.00	A
4503	3-15-29	Harry Joseph	0	2,000.00	A
4511	4-4-29	True Reformed Church of the Acquackanock.	4%	2,000.00	
4513	4-4-29	Karol Gusciara	0	500.00	A
4517	4-19-29	Samuel B. Feld	4%	450.00	
4518	5-2-29	Annie Cohen	4%	2,000.00	
4519	5-3-29	S. B. Feld & A. Huller, Assigne of J. Lipsky.	4%	675.00	
4520	5-4-29	Mike Struss	4%	150.00	
4522	5-13-29	Winfield T. Scott	0	3,000.00	A
4523	5-13-29	Jacob Van Hook	4%	1,200.00	
4524	5-15-29	Anna Eickenbaum	4%	2,048.00	
4526	5-27-29	Jennie Goldberger	4%	100.00	
4527	6-3-29	Geo. D. Easdale	4%	5,500.00	
4528	6-4-29	Samuel B. Feld	4%	500.00	
4529	6-7-29	Passaic Athenia Bus Co.	4%	1,000.00	
4530	6-14-29	C. K. Kantrowitz	4%	2,500.00	
4531	6-17-29	Equitable Title & Mortgage Co.	4%	4,000.00	
4532	6-17-29	Helen Swenson	4%	5,000.00	
4533	6-20-29	Johanna Schoenwald	4%	5,000.00	
				$80,486.72	

KEY: A—Held by this Company to maintain average balances.
C— " " " " as collateral to loan.

Exhibit C. 1.

CERTIFICATES OF DEPOSIT—DEMAND (continued)

MERCHANTS OFFICE

No.	Date	Name	To Order of	Rate	Amount	Key
573	10-2-25	Dr. Herman Levy	Self	B	$500.00	
621	9-7-26	M. L. H. Realty Co.	"	Schedule	500.00	
637	3-18-27	Bessie G. Ulrich	"	4%	1,625.00	
96	10-17-28	Nicholas Martini, Trustee	"	Schedule	1,000.00	
100	2-4-29	Harry Timinsky	"	"	3,500.00	
104	3-8-29	Anna E. Hackett	"	"	109.88	
106	3-12-29	S. Levitt	Hobart Trust	A	200.00	C
109	3-20-29	Textigrave Company	Self	4¼%	5,000.00	
114	4-4-29	S. Levitt	Hobart Trust	A	500.00	C
116	5-4-29	Morris Elfenbein	Self	Schedule	4,500.00	
118	5-7-29	Ben Ginenthal	Hobart Trust	A	100.00	D
119	5-7-29	Morris Tauber	Hobart Trust	A	500.00	D
121	5-13-29	William B. Uehlein	Hobart Trust	A	500.00	C
122	5-22-29	Frances Szczech	Hobart Trust	A	200.00	D
123	5-25-29	Samuel Deutsch	Self	Schedule	600.00	
124	5-27-29	Nicholas Martini, Trustee	"	"	1,000.00	
125	5-28-29	A. Bassin	Hobart Trust	A	300.00	D
126	5-5-29	J. Weiss	Self	Schedule	79.42	
127	6-5-29	Herman Ellman	"	4¼%	5,000.00	
128	6-12-29	Textigrave Company	"	4¼%	5,000.00	
129	6-13-29	Harry N. Stein, Adm.	"	Schedule	1,600.00	
130	6-14-29	Thos. J. Denboske, Jr.	Hobart Trust	A	200.00	D
131	6-15-29	J. Weiss	Self	Schedule	50.00	
		TOTAL AT MERCHANTS OFFICE.....			$32,564.30	

A—Certificates bear no interest, drawn to create a balance and held by Bank as collateral.

B—Certificates bear no interest, held by Depositor.

KEY: C—Certificates held with other collateral.

D—Certificates attached to borrower's note.

1	month—2%	Schedule
1½	" 2½%	
2	" 3%	
2½	" 3½%	
3	" 4%	
and longer		

Exhibit C. 1.

CERTIFICATES OF DEPOSIT—DEMAND

SERVICE OFFICE

No.	Name	Rate	Amount
406	Morris or Lillian Pinchok	4%	$ 500.00
407	Gussie Bosin	4%	4,844.45
409	Morris or Lillian Pinchok	4%	500.00
418	Nettie Harris	4%	2,000.00
419	Movde B. Feld	4%	158.50
420	Essential Petroleum Prod. Corp.	4%	5,000.00
421	Council of Jewish Juniors	4%	300.00
422	Leo S. Steinberg	4%	100.00
	TOTAL AT SERVICE OFFICE		$13,402.95

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ACCEPTANCES

1. In accepting drafts for customers does this institution require an adequate written agreement or guarantee from its customer to provide funds to meet the acceptance at maturity? Yes.
2. Does this institution properly show on its books and in its reports of condition, its liability, and its customers' liability to it, on account of such acceptances? At this date Acceptances executed amounted to $54,014.11 whereas bank's records show $28,308.32. Adjusted June 27-1929.
3. Does this institution purchase its own acceptances? If so, state amount now held. No.
4. Are purchase of its own acceptances included in loans and discounts?

LETTERS OF CREDIT

1. In issuing letters of credit (other than for cash) does this institution require an adequate written agreement or guarantee from its customers? Yes.
2. Does this institution properly show on its books and in its reports of condition, its liability, and its customers' liability to it, on account of letters of credit outstanding or honored? No. Liability not shown until drafts are accepted.

COLLECTIONS

1. Is a proper record kept of items received for collection; showing when received, from whom received, maker, on whom drawn, amount, papers attached and date paid or disposition? Yes.
2. Are items received for collection remitted for or credited upon the same day as receipt of payment? Yes.
3. In case of items sent for collection, is it the practice to credit customers' account or remit upon the same day as receipt of advice or payment? Yes.

Exhibit C. 1.

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OTHER REAL ESTATE OWNED.

Description and Location	Amount at which carried on Books	Amount of Encumbrances	Estimated Actual Value	State date acquired, whether taken for debt previously contracted, or otherwise and if Title is in the Company
See attached schedule.				

CASH ITEMS.

(1) Describe any irregular items, and (2) itemize losses estimated.

(1-2) None.

TITLE PLANT.

State (1) whether carried on books at gross or net cost; (2) whether or not any amounts have been included which do not represent actual expenditures for procuring searches, abstracts, indices, maps, copies of records, and other items entering into the legitimate cost of the plant; (3) the total losses sustained by the institution in the title branch of its business since organization, and (4) whether or not any special reserve is maintained to meet such contingencies. (5) Give details of any unsettled claims for losses under title policies or guarantees.

None.

SAFE-KEEPING

1. Is the system of records adequate to the extent that it affords protection to the institution and its customers? No record.
2. How are the securities, etc., safeguarded? Held by Note Tellers.
3. How often are audits made? Not made. 3a. Are audits complete?
4. Describe any irregularities revealed by the examination. Number of items held both at Hobart and Service Offices which are not recorded on Bank's books. Modern system should be installed, so audits will be possible. Very few items held.

SAFE-DEPOSIT DEPARTMENT

1. Is the system of records adequate to protect the institution and its customers? Yes.
2. Has any box renter left his key with an officer or employee? None ascertained.

Exhibit C. 1.

OTHER REAL ESTATE SCHEDULE.

CARRIED AT HOBART OFFICE

Description	Book Value	Estimated Value	Assessed Land	Valuation Buildings	Annual Rentals
12 family brick dwelling on Third Street, Passaic, N. J.	12,350.70	10,000. —	8,600	—	?
Lot 25 x 100					
Acquired in satisfaction of debt M. Lapitzky. Sheriff's Deed dated 5-24-29. Badly in need of repair.					
Wife of former owner attempting to reclaim and is now collecting rents. Bank expects to turn property over to her shortly without loss.					
Morris Lapitzky is now borrowing here under name of Greater New York Paint Co., which loans are classed as doubtful herein.					

CARRIED ON BOOKS AT MERCHANTS BRANCH

Frame dwelling located at #118 Park Place, Passaic, N. J.	18,754.36	14,000.	4,500	6,700	600.
Taken for debt J. Worksman. Deed recorded 8-29-28.					
The defect in title reported at previous examination is still unadjusted. Property occupied by former owner at nominal rent, which is in arrears.					
One story brick stable located at #88 First Street, Passaic, N. J.	17,262.69	15,000.	4,000	2,800	—0—
Taken for debt Sam Garber. Deed recorded 3-19-29.					
Garber is still indebted to the bank $13,158.64, most of which is considered doubtful and disallowed.					
The above property is well situated in a business district of the City, but of a type not in demand.					

The real estate market in Passaic, at present, is not brisk and these holdings will probably be slow in disposition. It is admitted that at a forced sale, little would be realized.

For the purpose of this report the above assets are allowed at estimated values and classed as extremely slow.

TOTAL DISALLOWANCE—$9,367.75

Exhibit C. 1.

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REDISCOUNTS AND BORROWED MONEY.

List amounts of money borrowed, whether on bills payable, rediscounts, open accounts, certificates of deposit, bonds, or otherwise. (1) Where borrowed; (2) interest rate; (3) date of maturity; (4) security; (5) whether all liabilities are shown on books; (6) whether authorized by the board of directors; (7) whether bank borrows habitually.

(1-7) None.

During period under review bank borrowed $50,000. for 10 days.

Since the publication of the "Elliott Episode" bank has resorted to borrowing.

On July 5-1929, $200,000. was put on books and is still open.

DIVIDENDS, ETC.

Give (1) date of last dividend, and state whether semi-annual or otherwise:
Annual dividend rate is per cent; (2) amount, $.

State (3) reason, if any, why bank should not declare a dividend at end of current dividend period.

No dividends have been paid this year.

Bank is not earning sufficient to cover operating expenses. Obviously, the payment of dividends is out of the question at this time.

RESERVE.

1. Is total reserve sufficient? No. Short $30,000. at this date.
2. Is reserve in bank sufficient? Yes.
3. Was the average reserve for the last 30 days in the bank sufficient, if not, what was the percentage? Yes.
4. Was the average reserve for the last 30 days with other banks, etc., sufficient, if not, what was the percentage? Yes.

AFFILIATED BANKS, ETC.

State (1) whether there is an affiliation with any other banking institution, through a controlling ownership of stock by the same shareholders, by practically the same management, or in any other manner, give name of affiliated institutions; (2) whether any director or officer is an officer in any other banking institution.

None.

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TRUST DEPARTMENT.

State (1) whether the system of records is adequate and suitable; (2) whether the securities, etc., are properly safeguarded; (3) how often audits are made and the extent thereof; (4) if the examination should disclose any irregularities, or that the institution has become liable as the result of negligence, or otherwise, in the administration of any trust, give full particulars.

(1) Yes.

(2) Yes.

Exhibit C. 1.

(3) At regular directors examination and once by outside auditing firm since organization of Trust Department.

(4) None Ascertained.

TRUST FUNCTIONS AT SERVICE BRANCH

Depository: Bonds of Englewood Gardens 7% 1926. Bonds on hand *(G. L. Miller & Co.)	$523,800.:	Cash	$45,951.37
Depository Bonds of Franklin Arms 7% 1928-36. Bonds on hand *(G. L. Miller & Co.)	115,00.		
*Bankrupt.			
Deposit agreement North Valley Building Corp. and Service Trust Co., Sept. 13-1927.			
Trustee: Joseph Riz		Cash	930.86
Guardian: Joseph McCormick		Cash	3,705.48
Trustee: Bond Holders under mortgage U.Kramian National Home of Passaic, N.J. $30,000. Bonds issued $ 8,000. On Hand 22,000. $30,000.			
		Cash on Deposit at Service Branch....	$ 50,587.71
		Bonds on Hand	$710,800.00

This Service Branch acts as transfer agent for the New Jersey Bankers Securities Corp.

647,901 ¾ shares outstanding—no par.
2,000.000 " authorized

*These cash deposits of Trust Funds are not secured as required by the statutes and are carried on individual ledgers.

FIDELITY BONDS, ETC.

State (1) the aggregate liability of the institution under fidelity and surety risk outstanding; (2) the total amount of losses sustained by it in this branch of its business since organization; (3) whether it maintains a special reserve of any kind for such contingencies. (4) Give full information as to all bonds, etc., the conditions of which have become in any way broken or impaired.

None.

Exhibit C. 1.

(182 u)

TRUST DEPARTMENT.

State (1) whether the system of records is adequate and suitable; (2) whether the securities, etc., are properly safeguarded; (3) how often audits are made and the extent thereof; (4) if the examination should disclose any irregularities, or that the institution has become liable as the result of negligence, or otherwise, in the administration of any trust, give full particulars.

(1) Yes.

(2) Yes.

(3) At regular directors examination and once by outside auditing firm since organization of Trust Department.

(4) None ascertained.

TRUST FUNCTIONS AT SERVICE BRANCH

Depository: Bonds of Englewood Gardens 7% 1936. Bonds on hand *(G. L. Miller & Co.)	$523,800.:	Cash	$45,951.37
Depository Bonds of Franklin Arms 7% 1928-36. Bonds on hand *(G. L. Miller & Co.)	115,000.		
*Bankrupt.			
Deposit agreement North Valley Building Corp. and Service Trust Co., Sept. 13-1927.			
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Exhibit C. 1.

FIDELITY BONDS, ETC.

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None.

PROFIT & LOSS
for year ending December 31, 1928.

Jan. 18-1928, BALANCE Undivided Profits (after consolidation)				$126,213.85
EARNINGS:				
Interest & Discount	417,838.16			
Exchange	2,500.23			
Rents—Buildings	17,446.50			
" Safe Deposit	1,404.75			
Trust Commissions	9,887.87			
Protest Fees, Comm. etc.	4,895.46			
Income from ordinary Operations		453,972.97		
Expenses:				
Interest paid	196,633.63			
Salaries	144,717.19			
Directors Fees	2,415.00			
General Expense	54,174.01			
Taxes	42,076.28			
Expense	20,792.31			
Over & Short	1,861.90			
Total Expense from Ordinary Operations		462,661.32		
Net Loss Ordinary Operations			8,688.35	
Net Profits Sale of Securities			181,036.39	
Recoveries on charged off Assets			1,164.45	
Total Net Income			173,512.49	
Losses charged off (see attached schedule)			36,977.56	
Net Earnings before			136,534.93	
Dividends Paid			80,000.00	56,534.93
December 31-1928, BALANCE Undivided Profits				$182,748.78

Exhibit C. 1.

NOTES CHARGED OFF DURING YEAR 1928.

MAIN	A. Rosenthal (net)	$ 8,300.00
	Paul Carso	47.30
	Sophis Bednarcek	365.00
	Jacob Pozin & Solomon Blacker	1,300.00
	Standard Clothing Co.	800.00
	do.	700.00
	do.	900.00
	M. Makarevick	130.69
	H. Gerlack & Son	1,300.40
	Jose Naples, Inc.	550.00
	John Miskoisky	90.00
	Chas. H. Powers	75.00
MERCHANTS		
	Ada Dress Co.	601.31
	do.	147.69
	Bessie Schechter	1,550.00
	Tillie Kremevics	160.03
	Pohlmeyer	457.16
	do.	749.27*
	Kent & Pohlmeyer	576.83
SERVICE	John B. Sartor	200.00
	Bernard Friend	4,322.22
	Jewell F. Elder	372.80
	H. & H. Beakler	400.00
	Passaic Auto Co., Inc.	175.00
	do.	1,250.00
	do.	350.00
	Catherine Potter	300.00
	Greenfield & Horland	2,500.00
	do.	4,000.00
	Helen Reichsten	459.23
	Ida Krugman	2,835.54
	James St. Donnelly	412.09
	Frances Melesky	550.00
	Thos. St. Haggesty	50.00
	TOTAL CHARGED OFF (1928)....	$36,977.56
To date (1929)		
	Bakelaar Note	2,000.00

*At previous examination date note bore endorsement of Edw. F. Hackett, Vice-President of this institution.

Exhibit C. 1.

PROFIT & LOSS.
For period Jan. 1-1929 to June 30-1929.

Jan. 1-1929, BALANCE Undivided Profits			$182,748.78
EARNINGS:			
Interest & Discount	164,938.74		
Exchange	725.67		
Rents—Building	9,651.50		
" —Safe Deposit	1,044.00		
Trust Commissions	3,576.22		
Protest Fees & Misc.	2,653.46		
Income from Ordinary Operations		182,589.59	
EXPENSES:			
Interest Paid	84,579.21		
Interest Paid Borrowed Money	244.44		
Salaries	66,401.74		
Directors Fees	335.00		
General Expense	23,448.38		
Taxes Paid	21,111.48		
Expenses Real Estate	3,655.54		
Over & Short	382.97		
Miscellaneous	500.00		
Total Expenses from Ordinary Operations		200,658.76	
Net Loss from Ordinary Operations		18,069.17	
OTHER CREDITS:			
Net Profits on sale of Securities		43,504.22	
Recoveries on charged off assets		1,350.40	
Net Income		26,785.45	
OTHER DEBITS:			
Net Adjustment setting up accruals	7,769.27		
Losses charged off (See schedule)	2,000.00	9,769.27	17,016.18
June 30-1929, BALANCE Undivided Profits			199,764.96
Net closing entries—Adjusting to date of examination			8,942.99
BALANCE, June 22-1929—Date of Examination			208,707.95
Adjustments made by Examiner			

Exhibit C. 1.

DEDUCT:			
Disallowance	Past Due Notes	64,158.58	
"	Doubtful Paper	281,029.80	
"	Furniture & Fixtures	35,000.00	
"	Overdrafts	330.23	
"	Banking Houses	415,000.00	
"	Other Real Estate	9,367.75	
Cash Short		17.96	804,904.32
DEFICIT DATE OF EXAMINATION			$596,196.37

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STATEMENT OF RESOURCES AND LIABILITIES AS FOUND BY THE EXAMINATION.

Resources	Book Value		Deductions		Additions	Allowed at
Loans and Discounts,	4,730,805.87	P/L	345,188.38			4,385,617.49
Overdrafts,		P/L	330.23	A	653.89	323.66
Stocks and Bonds,	840,672.52					840,672.52
Bonds and Mortgages,	307,650.00					307,650.00
Cash on Hand,	116,911.02					116,911.02
Checks and Other Cash Items,	48,140.53					48,140.53
Due from Other Banks, etc.	101,703.74					101,703.74
Banking House,	1,165,687.50	P/L	415,000.00			750,687.50
Furniture and Fixtures,	71,135.00	P/L	35,000.00			36,135.00
Other Real Estate,	48,367.75	P/L	9,367.75			39,000.00
Title Plant,						
Interest due, but not collected, $	19,532.96					19,532.96
Rents due, $; accrued, $						
Commissions due, $; accrued, $						
Mtgs. sold with Guarantee (Contra)	386,300.00					386.300.00
Customers Liability for Acceptances	28,308.32			C	25,705.79	54,014.11
Cash Short	17.96	P/L	17.96			
	7,865,233.17		804,904.32		26,359.68	7,086,688.53

Exhibit C. 1.

Liabilities						
Capital Stock,	1,000,000.00					1,000,000.00
Surplus Fund	30,000.00	D	596,196.37			296,196.37
Undivided Profits, less Current Expenses and Taxes Paid,	208,707.95		804,904.32	D	596,196.37	—0—
Dividends Unpaid,	132.00		50,587.71			132.00
Demand Deposits,	1,784,883.09	B	260.76	A	653.89	1,734,688.51
Demand Certificates of Deposit,	126,453.97					126,453.97
Time Deposits,	3,644,021.25					3,644,021.25
Time Certificates of Deposit, Trust Fund Deposits					50,587.71	50,587.71
Christmas and Holiday Clubs,	174,700.14					174,700.14
Certified Checks,	26,151.64					26,151.64
Treas. Checks Outstanding,	3,152.99					3,152.99
Due to Other Banks etc.,				B	260.76	260.76
Notes and Bills Rediscounted,						
Bills Payable,						
Interest Accrued on Deposits,	28,224.83					28,224.83
Taxes Acrued,						
Expenses Accrued,						
Unearned Discount	24,196.99					24,196.99
Mortgage Payable	130,000.00					130,000.00
Mortgages sold with Guarantee (Contra)	386,300.00					386,300.00
Acceptances Outstanding	28,308.32			C	25,705.79	54,014.11
	7,865,233.17		1,451,946.16		673,404.52	7,086,688.53

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EXAMINATION SUMMATION

Seven months ago, at the time of the previous examination of this institution, much criticism and an alarming state of affairs was reported by the Examiner. At that time it was pointed out that in the previous ten months the bank's business and earnings had been considerably curtailed. It was then suggested that the institution's greatest need was its disassociation from Harry H. Weinberger, its former President, and the restoration of public confidence. This suggestion appears to have been ignored, as a consequence of which the institution continues to suffer.

Deposits continue to fade. In addition to a loss of $1,250,000. in the ten months prior to previous examination date, a further reduction of $820,000. is shown at this date. During the course of this examination, over a twenty-one day period, which covers the date of the mysterious disappearance of Vice-President Elliott, another reduction of $271,000.00 in deposits has occurred, so that the total deposit shrinkage from the early part of 1928, (January 18) when the Hobart Trust Company and the Service Trust Company were merged under the guidance of Mr. Weinberger, to the closing date of this examination (July 13) stands at $2,370,000., or slightly less than one-third of the total deposits at the time of the merger.

Exhibit C. 1.

The institution continues to show an operating deficit, the amount recorded for the first six months of 1929 being more than double that shown for the full year of 1928. Notwithstanding that a recommendation was made heretofore that dividends be discontinued, a further dividend disbursement was made at the close of 1928, although unearned.

Profits on the sale of securities have been their only profits since the merger, and practically all of the increment in their Investment Account has been realized upon and disbursed. It should be remembered that the securities which supplied this profit were among the assets of the Hobart Trust Company prior to the Weinberger regime.

Being burdened with a large unproductive real estate asset; a personnel far in excess of its needs, at an annual salary entirely out of proportion to the bank's ability to pay; and with two offices located on the same thoroughfare, only two blocks apart, the business of both of which could readily be handled at one office; continued operating deficits are to be expected.

It is apparent that former Executive Vice-President Elliott had attempted to carry out the policy of his predecessor, with some success. Unsecured loans, which had been reduced about $1,000,000. in 1928, had been further reduced $550,000, but with an attendant decrease in demand deposits of a like amount. The result, therefore, is that the amount of unsecured paper still exceeds demand deposits the same amount as at previous examination date, or $1,800,000., all of which tends to show that the reduction in unsecured loans was effected only in the names which carried more or less compensating balances with the bank, while a large portion of those remaining, that have been carried along for years, with little or no reductions, are those without deposit balances of any substantial amount. It is clear that if the proper names were chosen a further reduction of $2,000,000. in this class of paper could be effected with deposit losses of negligible amounts.

The Elliott episode, which was reported to this Department on July 3rd (a copy of which, together with newspaper clippings, is made a part of this report) has further placed the institution in disrepute. What matters were then reported, which involved the institution, have been adjusted without loss to the Bank or recourse to the Surety Company. Nothing further has developed at the closing date of this examination, except that he has resigned and that deposits have been still further reduced in the amount of $200,000. The writer has again interviewed Mr. Elliott since his resignation, but the cause of his disappearance is still a mystery. The examination reveals no clue for the "kidnapping" other than his pressing certain borrowers for payment of their loans; and Mr. Elliott, himself, discloses no motive other than that he believes, in some way or other, his connection with this institution is responsible for his plight. Through Mr. Elliott's endeavor, many of the loans are shown in their true light which accounts for the change in classification of certain of the names since the previous examination.

Your attention is especially directed to the large amount of paper classed herein as Doubtful, and other Lines subject to criticism. It was found that many are long standing advances to friends of Weinberger who, heretofore, have shown no evidence of their financial standing, but were considered good by the management, and on that basis allowed to remain. Many now appear of a highly undesirable character, both financially and morally, and were advances either to Weinberger for his real estate and other speculative enterprises, or to his relatives and friends for the purchase of New Jersey Bankers Securities Company stock. Elliott reports that he met with great opposition when demand for the payment of these loans was made.

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EXAMINATION SUMMATION

The Banking House properties continues to be carried at an excessive amount. At the time these institutions were merged, the properties were written up, without approval of this Department, $675,000,00. Owing to the excessive cost of an appraisal by competent real estate experts, which the institution can ill afford, the writer is unable to exhibit, herein, convincing figures; but from outside inquiry of local Bankers and Passaic business people, a top value of $750,000. is placed upon the three properties owned, viz; Main Office $450,000., Service Office $225,000., Merchants Office $75,000. They are carried Main Office $715,687.50, Service Office $350,000., Merchants Office $100,000. From another angle, even these values could be considered excessive. The original cost of the Main Office property was about $100,000. A few years ago, with this Department's consent, the carrying value was increased to $200,000. by the old Hobart management. This figure was then considered practically full value and at a time when Passaic industries were at peak production and realty values soaring. At this date, without any improvement having been made to the building (which is old and unattractive), with Passaic business and real estate markets depressed, the estimated value of $450,000., a 125% increase, is extremely generous. The Service building (new), with land, cost about $250,000. The building is suitable only for banking purposes and as the Main Office is located on the same street, a few blocks distant, the property is practically useless to this institution. The business of both offices could, and should be, conducted under one roof, as each, in fact, are operating at a loss. The property would be more saleable without the building and the land is worth about $125,000. Hence the present estimated value of this property of $225,000. is not very low, especially in the hands of this institution which is on the downward grade. No comment on the Merchants Office is made, although Vice-President Hackett, who has been in charge of that office for years and long before it ceased to be an independent bank, places the top value of $60,000. In short, there seem to be no justification, whatsoever, for the present carrying values except that Harry H. Weinberger needed this additional amount at the time he purchased this institution at a ridiculous price and caused it to be assimilated by the write-up of $675,000. previously mentioned. This identical course was followed under similar circumstances in a Newark institution at the time of its purchase by the same individual. In the summary of this report these properties are allowed at the value which seems proper, all things being considered, and through the disallowance of $415,000. this institution's capital is thereby impaired.

The time has now arrived when practically all that is left in the bank, aside from accounts of borrowing names, are the savings accounts of an unsuspecting and mostly foreign element, and it is repeated, as at previous examination date, that only by a change of ownership can this institution continue to function with safety to the remaining depositors. Hardly a Director feels that he can conscientiously recommend the institution to his friends, owing to this undesirable ownership and the questionable character of Weinberger. The institution's name is the "Talk of the Town", with the newspapers continuing to spread the unfavorable publicity.

With the hope of loosening this vicious control, the writer attended a Directors meeting of the New Jersey Bankers Securities Company on Monday, July 1st, and considered with them, at some length, the condition of affairs here. They agreed that

Exhibit C. 1.

their own interests, and those of this institution, would be best served by the severance of their connection, and further stated that it would be offered for sale at an early date. Subsequently a meeting with the bank's Directors was attended by the writer, at which a resolution was passed to invite the Securities Company's board to a meeting at the office of this bank on July 25th to discuss ways and means of returning the institution to the ownership of local *reputable* people.

In the event of failure to bring this about, it is the recommendation of the writer that this Department take steps to protect the remaining depositors from loss as at almost every turn evidence of the Weinberger corruption is at hand. He made his debut as a Passaic banker in a fight in front of his institution, on its opening night, with a man who charged improper relations with his wife; his record as president of the former Service Trust Company is not one to be envied, as the files in this Department show and the recent "Kidnapping" episode, which as yet can in no way be proven, may be another means to an end desired by him. He is closely associated with and his bank has loans, and is loaning large sums to a man who, the police say, is close to the under-world.

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The contents of this report were discussed with the Directors at both their regular meetings occurring during this examination. They are in accord with the Examiner's views that many of the loans are bad; that the Banking House properties are carried at ridiculous figures; that the operating expenses of the institution are unwarranted; and that the only salvation for the institution, and that to be accomplished within a fort-night, is the casting off of all ties with Weinberger and the New Jersey Bankers Securities Company.

The liquid assets at the closing date of this examination appear as follows:

Collateral Loans secured by marketable collateral.....	$ 555,000.00
Market Value of Unencumbered Stocks & Bond.....	643,000.00
Cash on Hand and in Banks.....	554,000.00
TOTAL	$1,752,000.00
	32% of Total Deposit Liability

In conclusion the writer desires to record that the financial position of this institution, as reported herein, is contingent entirely upon the Real Estate values and the ultimate disposition of Criticised Loans against which no disallowance has been made at this time.

Respectfully submitted

VERNER D. PEER
Verner D. Peer
Examiner.

To:

Hon. Frank H. Smith
Commissioner of Banking & Insurance
Trenton, N. J.
Summit, N. J. June 22-1929.

EXHIBIT C. 12.

NEW JERSEY BANKERS SECURITIES CO.

Report for the Fiscal Year ended August 31, 1929

ARNOLD MARKEL & COMPANY
Certified Public Accountants
Two Lafayette Street
New York

Boston
6 Beacon Street

Exhibit C. 12.

October 1, 1929

Mr. John J. Stamler)
Mr. Nicholas LaVecchia) Receivers
New Jersey Bankers Securities Co.,
60 Park Place,
Newark, N. J.

Gentlemen:

In accordance with your request, we have made an examination of the books and records of the New Jersey Bankers Securities Co. for the Fiscal Year ended August 31, 1929 and submit herewith, Balance Sheet showing the condition of the Company at August 31, 1929 in accordance with the books, together with a Statement of Income & Profit & Loss showing the result of operations to the Company for the Fiscal Year ended August 31, 1929.

The comments accompanying the report we submitted to you as of July 25, 1929 will apply to the items appearing in the statement of August 31, 1929 and we refer you to them in connection with the accompanying report.

Respectfully submitted,

ARNOLD MARKEL & COMPANY,
Certified Public Accountants.

Exhibit C. 12.

NEW JERSEY BANKERS SECURITIES CO.

BALANCE SHEET
AUGUST 31, 1929

EXHIBIT A

ASSETS			
Cash on Hand & In Banks		$ 236 148.55	
Certificates of Deposit (Schedule 1)		421 960.00	
Securities at Cost (Schedule 2)		1 882 924.58	
Deposit on Contract		50 000.00	
Notes Receivable Secured by Collateral, Due October 4, 1931		2 300 000.00	
Other Notes Receivable		2 250.00	
Accounts Receivable (Schedule 3)		49 264.06	
Notes Receivable on Stock Subscriptions Secured by Collateral (Schedule 4)		17 375.00	
Subscriptions Receivable		34 415.00	
Furniture & Fixtures	6 199.30		
Less: Reserve for Depreciation	1 237.98		
		4 961.32	
Prepaid Expenses		192.00	
Organization Expense		157 017.06	
			$5 156 507.57
TOTAL ASSETS			
LIABILITIES			
Accounts Payable (Schedule 5)			4 733.53
CAPITAL			
Capital Stock Outstanding (648,669 ¾ Shares)	7 785 136.44		
Capital Stock Subscribed (7.745 ")	99 670.87		
Total Capital Stock..... 656,414 ¾ Shares			
		7 884 807.31	
Deficit (Schedule 6)		2 733 033.27	
NET CAPITAL			$5 151 774.04

Contingent Liabilities of Undetermined Amounts are not included in the above statement.

Exhibit C. 12.

NEW JERSEY BANKERS SECURITIES CO.

CERTIFICATES OF DEPOSIT
AUGUST 31, 1929

EXHIBIT A—SCHEDULE 1

No.	Date	Bank	Amount	Interest	Accrued Interest to 8/31/29
1514	8/26/29	Federal Trust Co.	$ 171 960.00	4%	$ 94.22
149	8/26/29	Merchants & Manufacturers Trust Co.	250 000.00	4%	136.99
			$ 421 960.00		$ 231.21

NEW JERSEY BANKERS SECURITIES CO.

SECURITIES OWNED
AUGUST 31, 1929

EXHIBIT A—SCHEDULE 2

No. of Shares	TITLE		COST Per Share	COST Total
835	Franklin Washington Trust Co., Newark	(A)	$102.17	$ 85 309.78
1,130	Equitable Title & Mortgage Guaranty Co., Passaic	(A)	159.47	180 200.00
70	Hobart Trust Company, Passaic	(A)	82.03	5 742.10
20	Franklin Trust Company, Paterson		285.00	5 700.00
1,160	Perth Amboy National Bank	(A)	249.49	289 400.00
42	National Bank of America, Paterson		185.00	7 700.00
658	Hamilton Trust Co., Paterson	(A)	377.23	248 200.00
2,584	Lebanon National Bank, New York	(A)	325.34	840 670.00
338	New Jersey National Bank & Trust Co., Newark		)	
318	Participation Certificates, Guardian Trust Co., Newark		)	39 215.70
62	Interstate Trust Co., New York	(A)	60.84	3 812.00
100	Franklin Fire Insurance Co., Philadelphia	(A)	266.00	26 600.00
100	Bank of Manhattan Co., New York	(A)	902.50	90 250.00
500	Seaboard Fire & Marine Ins. Co.		27.75	13 875.00
300	Allied International Investment Corp.		113.00	33 900.00
100	Phelps Dodge Corp.		85.00	8 500.00
$4,200	Par—A. Fink & Sons, Inc. 6½% Due 5/2/42—Newark		90.00	3 780.00
				$1 882 924.58

(A) Average Cost Price

Exhibit C. 12.

NEW JERSEY BANKERS SECURITIES CO.

ACCOUNTS RECEIVABLE
AUGUST 31, 1929

EXHIBIT A—SCHEDULE 3

Washington Trust Co.	July 1, 1928 Dividend on 18,174 Shares	$ 13 630.50
Hamilton Trust Co.	May 1, July 1, Sept. 1, 1928 Dividends on 15 Shares	90.00
Hamilton Trust Co.	Nov. 1, 1928, Jan. 2, Mar. 1, May 1, July 1, & Sept. 1, 1929 Dividends on 658 Shares	7 896.00
Hobart Trust Co.	Apr. 1, July 1, Oct. 1, 1928 & Jan. 1, 1929 Dividends on 70 Shares	140.00
R. B. McMillen	Balance due on subscription accounts taken over	10.50
R. B. McMillen	Carpet Purchased	100.00
Franklin Trust Co.	Jan. 2, Apr. 1 & July 1, 1929 Dividends on 20 Shares	90.00
U. S. Trust Co.	Jan. 2, 1929 Dividend on 405 Shares	1 620.00
A. Fink & Sons, Inc.	Accrued Interest on Bonds to August 31, 1929	91.00
Miscellaneous	Accrued Interest on Subscribers Notes Receivable to August 31, 1929	616.20
Adelson Ryan & Co.	Balance of Account	19.90
Allied Bankshares Co. Inc.	Balance of Account	24 728.75
Federal Trust Co.	Accrued Interest on Certificate of Deposit	94.22
Merchants & Manufacturers Trust Co.	Accrued Interest on Certificate of Deposit	136.99
		$ 49 264.06

NEW JERSEY BANKERS SECURITIES CO.

NOTES RECEIVABLE ON STOCK SUBSCRIPTIONS

SECURED BY COLLATERAL
AUGUST 31, 1929

EXHIBIT A—SCHEDULE 4

Date of Note	Maker	Amount	Date Due
Jan. 25, 1929	Morris Schoenbrun	$ 6 000.00	May 25, 1929
25	Herman Virag	6 000.00	25
Feb. 2	M. Friedman	5 375.00	June 2
		$ 17 375.00	

Exhibit C. 12.

NEW JERSEY BANKERS SECURITIES CO.

ACCOUNTS PAYABLE
AUGUST 31, 1929

EXHIBIT A—SCHEDULE 5

Hobart Trust Co.	Balance due for 2 shares Service Trust Co. stock not surrendered upon amalgamation	$ 500.00
Arnold Markel & Company	Services to March 31, 1929	900.00
Capital Realty Associates, Inc.	August Rent	200.00
N. J. Bell Telephone Co.	Service	61.15
Edw. N. Plates	Stationery	579.60
Burpo Co.	Photostats	4.20
Harvey Redder, Inc.	Moving Expense	75.00
Great Bear Spring Water Co.	Service	2.20
Newark City Ice Co.	Service	2.25
State Treasurer of New Jersey	Franchise Tax	2 390.65
Franklin Washington Trust Co.	Amount due on Exchange of Franklin Trust stock	18.48
		$ 4 733.53

NEW JERSEY BANKERS SECURITIES CO.

DEFICIT
AUGUST 31, 1929

EXHIBIT A—SCHEDULE 6

Deficit, September 1, 1928	$ 780 256.25
Add: Dividend Checks Cancelled, but Later Claimed and Paid	191.50
	780 447.75
Add: Net Loss for Year	1 952 585.52
Deficit, August 31, 1929	$2 733 033.27

Exhibit C. 12.

NEW JERSEY BANKERS SECURITIES CO.

STATEMENT OF INCOME AND PROFIT AND LOSS
FOR THE FISCAL YEAR ENDED AUGUST 31, 1929

EXHIBIT B

INCOME		
Dividends on Investments (Schedule 1)	$ 51 171.50	
Interest Earned	14 431.51	
Total Income		$ 65 603.01
OPERATING EXPENSES		
Loss on Sales of Securities (Schedule 2)	2 006 667.33	
Rent	4 950.00	
Telephone & Telegraph	1 099.60	
Transfer & Registration Fees	9 493.33	
Salaries	24 974.50	
Stationery & Printing	7 977.29	
Postage	2 381.80	
Interest Paid	449.96	
Directors' Fees	4 980.00	
Legal & Professional Fees	22 697.73	
Sundry Expenses	3 093.08	
Insurance	481.06	
Cash Shortage	49.11	
Depreciation	821.82	
Taxes	2 390.65	
Loss on Sale of Furniture & Fixtures	1 099.08	
Cost of Receiver's Bond	1 250.00	
Total Operating Expense		2 094 856.34
Operating Loss		2 029 253.33
DEDUCT: Amounts Forfeited by Subscribers on Subscriptions Cancelled		112 445.24
		1 916 808.09
ADD: EXPENSES APPLICABLE TO PERIOD PRIOR TO SEPTEMBER 1, 1928, PAID SUBSEQUENTLY:		
Cost of Cancelling Lease at 551 Fifth Avenue	20 580.00	
" " " " " 350 Madison Avenue	11 160.00	
Settlement of Contract for Purchase of Furniture	550.00	
Legal & Professional Fees	3 108.46	
Expenses Paid for New Jersey Continental Bankshares Co.	811.30	
	36 209.76	
Less: Insurance Refund	432.33	
		35 777.43
Net Loss		$ 1 952 585.52

Exhibit C. 12.

NEW JERSEY BANKERS SECURITIES CO.

DIVIDENDS ON INVESTMENTS
FOR THE FISCAL YEAR ENDED AUGUST 31, 1929

EXHIBIT B—SCHEDULE 1

30,210	Shs.	Hobart Service Trust Co.	$30 210.00
60	"	Paterson National Bank	180.00
658	"	Hamilton Trust Co.	9 212.00
65	"	Passaic National Bank	1 040.00
20	"	Franklin Trust Co.	120.00
1,160	"	Perth Amboy National Bank	2 320.00
405	"	U. S. Trust Co.	5 265.00
100	"	Home Fire & Marine Ins. Co.	80.00
100	"	Empire Trust Co.	600.00
200	"	American London & Empire Corp.	300.00
338	"	New Jersey National Bank & Trust Co.	760.50
100	"	Bank of Manhattan Co.	600.00
100	"	Franklin Fire & Marine Ins. Co.	280.00
42	"	National Bank of America	84.00
5	"	Globe & Rutgers Ins. Co.	30.00
10	"	Interstate Trust Co.	15.00
100	"	Phelps Dodge Corp.	75.00
			$51 171.50

NEW JERSEY BANKERS SECURITIES CO.

PROFIT & LOSS ON SALES OF SECURITIES
FOR THE FISCAL YEAR ENDED AUGUST 31, 1929

EXHIBIT B—SCHEDULE 2

			Cost	Selling Price	Profit	Loss
60	Shares	Paterson National Bank	$ 20,400.00	$ 22,200.00	$ 1,800.00	....
70	"	American Exchange-Irving Trust Co.	31,430.00	35,560.00	4,130.00	....
95	"	Interstate Trust Company	29,935.00	31,160.00	1,225.00	....
75	"	Corn Exchange Bank	55,855.00	57,000.00	1,145.00	....
405	"	United States Trust Co.	303,750.00	313,875.00	10,125.00	....
100	"	Home Fire & Marine Insurance Co.	4,050.00	4,400.00	350.00	....
50	Units	Bank of United States	10,150.00	11,250.00	1,100.00	....
17	Shares	National Bank of America	3,095.00	3,213.00	118.00	....
50	"	Equitable Trust Co.	27,737.50	28,890.00	1,152.50	....
100	"	Empire Trust Co.	45,625.00	50,596.00	4,971.00	....
95	"	Chase National Bank	87,310.00	91,009.20	3,699.20	....
25	"	Seaboard National Bank	21,250.00	23,498.00	2,248.00	....
50	"	New York Trust Company	12,950.00	13,799.48	849.48	....
25	"	Bank of Manhattan Co.	20,460.00	21,899.00	1,439.00	....
15	"	Bankers Trust Company	18,825.00	20,729.40	1,904.40	....
250	"	Interstate Trust Company	85,050.00	90,544.00	5,494.00	....
200	"	Merchants and Manufacturers Ins. Co.	4,800.00	5,200.00	400.00	....
200	Units	American London & Empire Corp.	17,150.00	17,788.00	638.00	....
5	Shares	Globe & Rutgers Ins. Co.	7,800.00	7,854.80	54.80	....
65	"	Journal Square National Bank	19,975.00	20,182.40	207.40	....
		Sale of Bank of Manhattan Rights	....	8.98	8.98	....
260	"	Passaic National Bank & Trust Co.	34,450.00	35,100.00	650.00	....
30,140	"	Hobart Trust Co.	2,472,337.09	421,960.00	....	2,050,377.09
			$ 3,334,384.59	$ 1,327,717.26	$43,709.76	2,050,377.09
						43,709.76
		Net Loss				$ 2,006,667.33

Exhibit C. 13.

EXHIBIT C. 13.

November 12th, 1929.

TO THE STOCKHOLDERS:

Re:—**NEW JERSEY BANKERS SECURITIES CO.**

In accordance with the suggestion of **Governor Larson** of the State of New Jersey, a copy of whose letter is enclosed herewith, a group of stockholders representing a very substantial number of shares of New Jersey Bankers Securities Company met and designated the undersigned to act for them as a **STOCKHOLDER'S COMMITTEE.**

Up to the present time, stockholders of New Jersey Bankers Securities Company have not united for action, in spite of the fact that **it is their money which has been invested in that company;** so, by the authority vested in it by the group of stockholders above mentioned, **this Committee is now taking steps to investigate the affairs of New Jersey Bankers and represent and protect the interests of all the stockholders.**

As you will recall, under date of August 23, 1928, a letter was sent to you by Mr. Stamler, the President, containing the following statement:

> "Please be further advised that the book value of the stock, after the settlement has been approved by the Court and you, will be upwards of **$11.00 per share.** Do not sacrifice your stock, as I am certain that with further honest and conservative management a substantial profit can be made on the assets of the company, which **assets will amount to upwards of $6,500,000.00** and

Exhibit C. 13.

eventually place the stock upon a dividend and earning basis."

On October 10, 1928, Mr. Jelin, the then Vice-President and General Manager, wrote you as follows:

"Before accepting the position of Vice-President and General Manager I studied the affairs of the Company very closely in conjunction with Mr. Stamler. Markel and Becker, Certified Public Accountants, of New York, examined the books at our request, and have presented a statement as of August 31, 1928, showing a Book value of **$12.05 per share.** No allowance has been made for good will in reaching this figure, which represents assets."

In spite of these encouraging statements, **it is understood that the present market value of** the **stock is between $1.00 and $2.00 per share.**

Following is a list of the Holdings of New Jersey Bankers Securities Company which have recently been disposed of by the Receivers, with the approval of the Court of Chancery:

	Bought At	Sold At
30,210 shares HOBART TRUST CO.	82.50	14.00
1,150 shares PERTH AMBOY....	250.00	175.00
2,564 shares LEBANON NAT'L..	306.25	125.00

(Approximate Figures)

Concerted action upon the part of the stockholders is necessary, and as the Committee has been advised by prominent counsel in the State of New Jersey that **the stockholders' position is well taken,** and that they have a rightful and

enforceable claim which has not been properly presented, it is going ahead.

To retain counsel, however, and to protect your interests, this Committee must have a fund. Its members and the other stockholders who have met with it **have already contributed in the amount of 10 CENTS PER SHARE FOR EACH SHARE OF STOCK** held by them; and one of the purposes of this communication is to earnestly request that **each and every stockholder send at once 10 cents for each share of stock held.**

If you hold 10 shares send $1.00.

If you hold 20 shares, send $2.00, etc.

Make your checks payable to the order of "Stockholders Protective Committee of N. J. B.", and mail same together with the enclosed proxy, direct to

The Trade Bank of New York,
Pennsylvania Building,
225 West 34th Street,
New York City.

The amount is insignificant compared with your investment, and the contribution requested will protect your interests.

In replying, please also sign, have witnessed and return the enclosed proxy, running to members of this Committee, **so that they may represent you in investigating the affairs of New Jersey Bankers and in protecting your interests.**

Remember:

(1) **Your contribution of 10 cents for each share.**

Exhibit C. 13.

(2) **Your proxy.**

(3) **Your interests in the company.**

Very truly yours,

STOCKHOLDERS' PROTECTIVE COMMITTEE OF NEW JERSEY BANKERS SECURITIES COMPANY
CHARLES J. RYAN
FRANK S. WINSTON
JOSEPH C. HUMBERT
HENRY LOUDEN

Nirenstein, Rhodes & Nirenstein,
Counsel,
165 Broadway,
New York City, N. Y.

Cortlandt (2724
(2725
(2726

P. S. Please attend to this NOW. It is for **your** benefit. Any **inquiry or communication** should be addressed to the **Counsel for the Committee, Nirenstein, Rhodes & Nirenstein.**

Exhibit C. 13.

[SEAL] STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

The Secretary to the Governor

September 3,
1929

My dear Mr. Ryan:

For Governor Larson, receipt is acknowledged of your letter of August 22d.

The matter of the New Jersey Bankers is, at the present time, in the Court of Chancery, where the stockholders have ample opportunity to protect any and all of their rights, and if a Stockholders' Committee were formed, they would, undoubtedly, have the privilege of investigating the business transactions of the company and find out what disposition had been made of the assets of the corporation and how the money was spent. The Governor does not feel it necessary, where a matter of this kind is within the control of the courts, to call for a separate and distinct investigation.

Very truly yours,

THOMAS L. HANSON,
Secretary to the Governor.

Charles J. Ryan, Secretary
Andes Petroleum Corporation,
165 Broadway, New York City, N. Y.

.....

Exhibit C. 13.

PROXY

KNOW ALL MEN BY THESE PRESENTS

That I, the undersigned, being the owner of.... shares of stock of the New Jersey Bankers Securities Co., do hereby constitute and appoint

CHARLES J. RYAN
FRANK S. WINSTON
JOSEPH C. HUMBERT
HENRY LOUDEN

my true and lawful attorneys in my name, place and stead to vote upon the stock owned by me or standing in my name as my proxy at all regular and special stockholders meetings called for the election of directors and/or any and all other business which may lawfully come before the meeting of the said corporation and/or before said stockholders meetings, hereby granting the said attorneys as a whole or by majority thereof full power and authority to act for me and in my name at the said meeting or meetings, hereby ratifying and confirming all that my said attorneys may do in my name, place and stead irrevocably until this proxy is revoked by me in writing.

IN WITNESS WHEREOF I have hereunto set my hand and seal this day of 1929.

.....L. S.

Witness:

.....

EXHIBIT C. 2 OF MAY 29, 1930.

MINUTES OF STOCKHOLDERS' MEETING of the New Jersey Bankers Securities Company, held at the Chancery Chambers, Jersey City, New Jersey, on Tuesday, the fourteenth day of January, 1930, at 7 P. M.

Mr. Goldsmith: This meeting was called for seven o'clock. It is seven twenty-five and many of us are from New York. I think it is no more than right that we should proceed.

Mr. Samuel Nirenstein: Ladies and Gentlemen: I know that the room is rather crowded and that there is a little discomforture, but if you please do the the best you can under the circumstances, it will help everybody.

I want to introduce to you as chairman just to open the meeting, the chairman of the Stockholders' Protective Committee, Mr. Charles J. Ryan, who will briefly tell you about the Stockholders' Protective Committee, which was the instrumentality that brought about this meeting.

Mr. : May I ask whether Mr. Ryan is proposed as permanent chairman or temporary chairman?

Mr. Nirenstein: Temporary chairman. Mr. Ryan has asked me preliminarily to take about a moment to put before you an outline of the Stockholders' Protective Committee, their work and their purposes.

The Stockholders' Protective Committee was formed by four gentlemen, after they had received proxies from a certain number of stockholders, the proxies running to them. These four men, Mr. Charles J. Ryan, Mr. Frank S. Winston, Mr. Henry Louden and Mr. Humbert, are all

stockholders of the New Jersey Bankers. None of these gentlemen held office in the past, nor do they hold office in the company today, but acted as a Stockholders' Protective Committee generally acts in attempting to call together the stockholders for the purpose of doing what they could to make their holdings valuable, and to determine what they wish to do.

Following this out, the Stockholders' Protective Committee addressed a letter to such of the stockholders as they could get names for, asking the stockholders to please go with them and look into the situation and work with and join the Stockholders' Protective Committee. As a result thirty-three thousand shares held by some three hundred and seven stockholders were represented by this committee.

At the last hearing before the Vice-Chancellor, through the New Jersey counsel, Mr. Isadore Glauberman, who was retained to represent them, their cause was presented to Vice-Chancellor Backes in open court, and objection was made to the declaration of a liquidating dividend of $1.50, and further objection to the allowance of seventy-five thousand dollars asked for by the receivers for interim fees. Immediately after the hearing, or rather at the close of the hearing before Vice-Chancellor Backes, the Vice-Chancellor put the entire matter off; that is, the hearnig on the order to show cause why there should not be a liquidating dividend of one dollar and a half paid back to the stockholders, and why the receivers should not receive the allowance as requested. The Vice-Chancellor adjourned the matter to February 4, indicating in the meantime that the stockholders would have ample opportunity of looking the situation over and coming to whatever conclusion

they deemed best, and they would have sufficient time to then present it to the Vice-Chancellor.

Following out this purpose, the Stockholders' Protective Committee addressed a letter in accordance with the law of the State of New Jersey, as I understand it, to all of the stockholders, the list having been furnished by the office of the receivers, and the records being here this evening to check up as to the proxies and as to the stockholders. A letter was sent out telling the purpose of the meeting, and enclosing the notice required by law, and also enclosing a proxy. Those of the stockholders who determined that they wished to be represented by this committee sent their proxies in, and they are here tonight. Those stockholders who wished to appear in person were earnestly requested to do so, and they are here tonight.

Now, such is the purpose of this meeting to call together the stockholders and present whatever they desire to the Court. As a matter of fact, though the receivers are not here tonight, we have, I understand, the official representative of the receivers present here, taking a full record of the proceedings tonight.

The Stockholders' Protective Committee recognizes and realizes that its sole and only purpose and function is to have somebody start the activity on behalf of the stockholders, and after it is started, it is for the stockholders to continue.

The stockholders are here this evening, and Mr. Charles J. Ryan, the chairman of the Stockholders' Protective Committee, I suggest as chairman pro tem—pro tempore chairman, until the desires of the meeting are known.

Mr. Charles J. Ryan: Now, that Mr. Nierenstein has so ably told you what the business of the

meeting tonight is, and what the Stockholders' Committee has been trying to do since last August, the first matter before the meeting will be the election of a chairman and election of a secretary, and the nominations, I believe, should come from the floor.

Mr. : I move that Senator Edwards be elected permanent chairman for tonight.

(Motion seconded.)

Temporary Chairman Ryan: All in favor of the election of Senator Edwards as chairman of the meeting this evening say "aye".

("Aye".)

Temporary Chairman Ryan: Contrary.

("No," "No," "No," "No," "No," "No.")

Mr. Leon London: Ladies and Gentlemen: I represent some three thousand shares of stock. I am an attorney in New York, and the election of Senator Edwards here as chairman for the evening does not give him any official capacity or any right to represent you. It is solely that he should conduct the meeting, and point out those who are to speak before the meeting. He is just a peacemaker here. I have no objection to Senator Edwards. He is here in no official capacity. He being the most important man here, from his position and his past activities as president of the company, I have no objection to his being here as chairman of the meeting, and I don't think anybody should have any objection. He can fill the office as well as anyone.

Mr. Goldsmith: I take it upon myself to reply to the previous speaker. I am a stockholder in the company. I have been misled by Senator Edwards, and I don't care to have him have any-

thing to do where he can do anything more than he has done against it.

(Point of order.)

Mr. London: I brought an action against Senator Edwards to enjoin the merger of the Financial Corporation, and it was subsequent to that time that the present receivers were appointed by the Vice-Chancellor. As far as Senator Edwards' qualifications as chairman for the evening are concerned, no one can doubt them. I am opposed to the re-appointment of the old board of directors, and I am opposed to the old order of things. I want to see a new deal here.

Mr. : Let us get some new man.

Mr. : I nominate Mr. Ryan.

(Motion seconded.)

Mr. : I nominate Mr. Goldsmith.

(Motion seconded.)

Temporary Chairman Ryan: All in favor of the election of Goldsmith say "aye"; contrary "no". Those in favor raise their hands; all contrary-minded raise their hands.

Mr. Goldsmith: I withdraw; ask someone else. Mr. Ryan was nominated and seconded; I seconded him.

Mr. Nierenstein: All in favor of the election of Mr. Ryan as chairman of this meeting this evening, say "aye"; contrary, "no".

(One vote against, all others voting "aye".)

Mr. : I move we make it unanimous.

Temporary Chairman Ryan: It seems to have passed.

The next matter before the meeting is the election of a secretary.

Exhibit C. 2 of May 29, 1930.

Mr. : I move the nomination of Mr. Winston as secretary.

Mr. Winston: No.

Chairman Ryan: Mr. Winston does not care to serve. Are there any other nominations for the office of secretary at this meeting?

Mr. : I nominate Mr. Samuel Berman, 30 Church street.

(Motion seconded.)

Chairman Ryan: All in favor of his nomination as secretary of the meeting, say "aye"; contrary, "no".

(One vote against; all others voting "aye".)

Chairman Ryan: Mr. Berman is elected secretary.

Mr. : Is he a stockholder in the company?

Mr. Berman: Yes.

Chairman Ryan: Now, that we have elected a chairman and secretary, I would like you to listen to Mr. Glauberman, who is the New Jersey counsel for the Committee, and he will explain some more of the business of the meeting this evening, and why he thinks we should proceed along the lines that we have adopted.

Mr. Isadore Glauberman: Mr. Chairman, Ladies and Gentlemen: I have very little to say to you, except I am going to explain on what legal basis we are holding this meeting. I have examined the By-Laws of the company and I find that the last election was a year ago September; that is, in 1928. If this company were not in the hands of receivers, there would have been an election last September. There was no election, as you know. And I also find that the order appointing receivers did not enjoin the company

from holding any meeting. After examining the records, I find that all of the directors have resigned; only two are still directors of the company. One is Senator Edwards and another one is Mr. Stafford.

Mr. London: Two out of ten.

Mr. Glauberman: When I appeared on December 17 before Vice-Chancellor Backes, I requested him to adjourn the matter until the stockholders have an opportunity to vote, first, whether they wish to have liquidation, or whether they wish to have the company in existence; and then, if they wish the latter, to have the right to elect a Board of Directors. As you all know and as has already been stated, Vice-Chancellor Backes adjourned the matter to February 4.

We then proceeded under Section 46 of the Corporation Act, which provides, whenever there is no legal possibility of holding a meeting according to the By-Laws, that three stockholders who have the right to vote, may call a meeting by advertising in a newspaper where the company has its registered office, and give notice to all stockholders. The Committee at its own expense carried out the purpose of the statute. I then examined the By-Laws and found that before we can have a legal meeting, we have to have fifty-one per cent. of the stock represented at a meeting. I understand from the proxies that we have close to 172,000 shares that are held by Mr. Markley as trustee—that we have a majority, and I suppose with some of you who didn't sign the proxies, that we have some fifty-one per cent. We have an adding machine here: we have the proxies here; we have the books of the company here.

I also want to call to your attention that under Section 36 of the Corporation Act, only stock-

holders who are stockholders of record twenty days prior to the date of this meeting—that means twenty days prior to January 14; that is December 24. If there is any one of you that bought stock before and did not transfer the stock on the books of the company, you cannot vote at the meeting; or, if you have transferred the stock after December 24, you cannot vote at the meeting. It is not because we don't want you to vote, but the statute is so.

Mr. Henry Louden: Is a receipt satisfactory evidence of registration?

Mr. Glauberman: No; we have the books of the company here. We will ask you the name. We will look in the books, and if we find that you are there, then you have a right to vote, and I suppose a receipt will do, if it is given by the secretary of the receivers or the secretary of the company—a receipt from the secretary that he has received the stock.

Chairman Ryan: Transferred the stock. A receipt is not sufficient.

Mr. Glauberman: I want to make clear one thing, and that is, my attitude in this matter.

I was retained to appear on December 17 and ask for an adjournment, so the stockholders may have an opportunity to vote. We sent out a letter under the signature of Mr. Nierenstein and myself as well as the Committee, urging you to send us a proxy. I believe that the first thing this meeting has to do is to decide whether you want liquidation or whether you want the company to be continued. My job here is to report to the Court what your wishes are. (Interrupted.)

Exhibit C. 2 of May 29, 1930.

Mr. Joseph Socolof: I would like to speak for myself, holding a thousand shares. I want to know, and I won't know anything unless I am intelligently enlightened, what it is all about, if liquidation, or continuing and electing a board. We would like to know what chances we have by electing a new board and fighting the receivers and removing them. Are we going to better our condition by electing a new board; who will be on the board, and how represented, and so forth; or is it merely a case of being blindfolded; give us your proxy vote, because the receivers want to pay a dollar and a half to start with; and so we want to be enlightened before we do anything else.

Chairman Ryan: I thought you were going to ask Mr. Glauberman a question. The matter you brought up will be decided by the stockholders later. Or if this meeting seems to the consensus that we want to liquidate, it should be liquidated; otherwise, we will go ahead.

Mr. Glauberman: Mr. Socolof, your question I am not here to answer, because I am not here advocating one thing or another. I just want to explain the purpose of this meeting, and if you gentlemen decide liquidation, I will report to the Court that you want liquidation; if you decide that you want the company, and you elect a board, I will file a petition accordingly in behalf of the stockholders' committe. But let me proceed, if you don't mind and let me tell you how I think this meeting should proceed.

I think, first of all, the question should be decided whether you want liquidation or whether you want this corporation to be continued. Then if you decide on the fundamental policy, the next

question will be what kind of directors do you want.

May I say something else? This hasn't been brought out yet. Before we called this meeting, we asked Miss Matey, the secretary, and the receivers to give us a list of all shareholders of record who have shares of five hundred and over, to call a preliminary conference and ask how they feel about it. We sent out a letter to all those men—it is not a stockholders' meeting, just a conference—to get their view, and we met on January 9th in the Robert Treat Hotel, last week, and there certain resolutions and recommendations were passed for your consideration. If you like them, you will agree; if you don't, you will vote against it. I mean it is up to you. But I am very anxious personally there should be nothing put over. You have a perfect right to give your objection, explain your reasons pro and con, and I also would like to say this: I personally did not know anything about the New Jersey Bankers or Mr. Weinberger and all the trouble until some time in November. I was in Europe; so I am really an outsider in this case, but I understand there is some bitter feeling one way or the other. I honestly believe this is not the place for it. We have a few objects to obtain. We cannot stay until three o'clock in the morning. I promised Miss Matey, who was kind enough to come with a special man—I don't want to keep her here until three o'clock. I promised Mr. LaVecchia, who was kind enough to trust me with the records of the company, and I want to tell you it was very nice of them, because as receivers they are entrusted to keep the records in their care, and I want you to appreciate the position they are in and the position I am in. We want to

keep to the point. When a motion is on the floor, discuss it thoroughly, and then take a vote and abide by the vote of the majority. I have the Corporation Act before me; if there is any question I don't know, I will try to look up and answer you. So any question you want to ask as to the legal side of the meeting, I shall be glad to answer; and there are quite a few lawyers here. If I don't know, they will help me out.

Mr. London: What is the position of the one hundred and seventy thousand shares of Weinberger stock?

Mr. Glauberman: I looked into that question. I asked for the contract under which Mr. Weinberger bought his stock, and I think that contract provides that Mr. Markley has the right to vote that stock.

Mr. London: Would he also have the right to vote if Mr. Weinberger were in default under that contract?

Mr. Glauberman: As far as I know, this stock —you ask me for a legal opinion offhand?

Mr. London: Yes.

Mr. Glauberman: Offhand, I will say that he has, unless some proceedings were taken by the corporation, or by the receivers, to stop it. The reason is this, Mr. London: if a corporation sells stock and takes a note from a man, and then that man is supposed to pay installments and he doesn't meet his installments, it doesn't mean that the contract is void, but it means that you can sue on the note. It is not the case of a subscriber. It is the case of an outright issue, for which he gave certain contracts as collateral security.

Mr. London: But he is trustee for the corporation.

Mr. Glauberman: No, he is trustee for Harry H. Weinberger. I was very careful to look into the question, because it became very important for me to decide how will I obtain fifty-one per cent. of the meeting. After looking at the contract I came to the conclusion that the stock is issued and outstanding. Furthermore, Mr. London, I have a precedent with the last Equitable deal. There was a meeting where that stock was voted, so my answer today, unless there is some legal opinion to the contrary, and even that would not make any difference, I frankly submit, because this meeting cannot sit in judgment whether a man van vote his stock or not. It is a legal question for the Court to decide. My answer, therefore, is, as far as the situation stands now, he has a right to vote, whether we like it or not.

Mr. London: At the last meeting before the Equitable deal objections were made to the voting of that stock.

Mr. Glauberman: I understand so.

Mr. London: And the stock was withdrawn, and was not voted at that time.

Mr. Glauberman: This is not my understanding. Mr. Markley is here, as I understand. Is Mr. Markley here? I saw Mr. Markley outside. I understand it was voted, and it was not withdrawn, and I looked at the state of the case. I looked at the state of the case of Solomon Bornstein, No. 1, against New Jersey Bankers, and I find the case prepared for suit, that the report is four hundred and some odd thousand voted, and that this included the one hundred and seventy-two thousand. So it was not withdrawn.

Mr. Daniel Fraad: I would like to know the financial status and condition of the company.

Mr. Glauberman: My answer is, it is not material to my present outline. When the question comes up for you to vote whether you want liquidation or not, the question will be proper.

Mrs. Lillian Kay: A little while ago, one of the men asked whether—he wanted to be enlightened as to just what is going to go on here. The question is this at hand, and I think we should continue and work just on that one basis, and in order to get anywhere, instead of each time one asking a question and not hitting the nail on the head, the first thing I want to bring to your attention is this: A short while ago we received notice through the mail that the shares of stock book value was $12.50 a share. Today we receive a notice—just a few days ago, that the liquidating value is just $1.50 today. What has become of that vast volume of money between the twelve dollars and a half and the one dollar and a half? Now, then, we cannot lose more than one dollar and a half per share. The only thing we can do is to take a chance and go ahead with it, and continue this corporation and find out just what we can get back from this company.

Chairman Ryan: It is the consensus of opinion of the Stockholders' Protective Committee that we would like to continue the company. I don't know how the other stockholders feel about it.

Mr. Irving Rosenfeld: I think Mr. Glauberman should be given an opportunity to continue the proceeding as a lawyer would conduct a meeting of this kind. He is first dealing with the situation whether or not anything we say here has got anything to do with it, and I think if you will

let him proceed, he will take you along the right line. He is conducting this as an intelligent lawyer would his case, and that he must do. Let him find out whether our talk here is worth anything. If he cannot produce fifty-one per cent. of the stock, I understand we will all go home and go to bed and rest.

I am a stockholder in my own right and I represent upwards of one thousand shares. What is the total issue and outstanding number of shares of stock entitled to vote at a meeting of this kind?

Mr. Glauberman: I am glad you made that statement. There are over six hundred and forty-odd thousand shares outstanding. I think Miss Matey could help me out. Have you (Miss Matey) the exact figure?

Miss Matey: Six hundred and forty-five thousand, but we will look it up.

Mr. Rosenfeld: Is that official and recognized by the Court?

Mr. Glauberman: Recognized by the receivers as well as the Court. There are over ten thousand stockholders and two thousand subscribers.

Mr. Rosenfeld: Are the subscribers entitled to vote?

Mr. Glauberman: No, only the stockholders, and we sent out notices of the meeting only to stockholders, and not to subscribers.

May I therefore suggest, in view of Mr. Rosenfeld's suggestion, that the Chairman now appoint immediately two inspectors? We have prepared list alphabetically; we have the proxies here, and we have also one hundred and seventy-two thousand present. May I suggest this: those that did not send in their proxies, or do not want to send them in, to please give their names to

somebody here, the name and the address and the stock they hold, so the inspectors will be able to examine and report to us what shares we actually have. We have the books here and we have the list.

Mr. London: May I call to Mr. Glauberman's attention the fact that the contract between the company and Mr. Weinberger provides that the stock is to be issued in the name of Markley, and to be endorsed by him in blank, to be held by the New Jersey Bankers Securities Company as security for the said note of two million three hundred thousand dollars.

Chairman Ryan: Which stock?

Mr. London: One hundred and twenty-two thousand shares. The right of Edward A. Markley is to vote the said stock to the best interest of the said New Jersey Bankers Securities Company, but it cannot be voted at this meeting.

Mr. Glauberman: Why not?

Mr. London: Because there is no Board of Directors in existence to advise what the best interests of the company are. He is holding it as trustee for the company.

Mr. Glauberman: I will humbly give you my answer. Whether there is a Board of Directors or not, makes no difference, whether a man has a right to vote; because the Board of Directors are not sole judges to advise what are the interests of the stockholders. A trustee has the law of trusts. As you know, he must use his own judgment, whether he proceeds properly in the interest of the stockholders or not. If his judgment is not proper and you disagree with him as a minority stockholder, I believe that would be a proper challenge to the Court at the proper time.

And I think every one of you has a right to do that. You can reserve your objection or exception to anything that goes on in this meeting. Please remember that you are free individuals. Don't permit yourselves to be swayed by anybody. Think of your own interest and those people that you represent. If anybody objects to anyone voting, challenge his vote. We will make a note of it, and then it will be properly presented to the Court. Does that answer your question?

Mr. Joseph Carlotti: I represent two hundred and fifty shares.

Chairman Ryan: In your own name or by proxy?

Mr. Carlotti: Partly in my name and partly by proxy. I can give you the names of those if you wish. I just want to make known that I wish to participate in this matter here, as soon as you said that the names must be given in.

Mr. Glauberman: Not at this time. We will take this up in a moment.

Is there any question, please? I would like to answer any question pertaining to the legality of the matter in question I can answer. Don't ask me questions of animus or policy.

Mr. Philip Cooperman: I represent sixteen hundred and fifty shares I own and five hundred and fifty by proxy.

Chairman Ryan: Have you your shares with you?

Mr. Cooperman: No. I want to know what became of the one hundred and seventy-two thousand shares?

Mr. Glauberman: Mr. Markley still holds them as trustee for the money that he was supposed to pay to the New Jersey Bankers. Don't ask me

any question as to the management of the company. Don't ask me any question whether it is wise, any financial idea. I am not a financier, remember that. I want you to ask me only questions which I think I'm able to answer. Ask me questions pertaining to the legality of this meeting, but don't ask me as to past or future.

Mr. : The stockholders came over here tonight and would like to know whether Mr. Weinberger paid up the money or did not.

Mr. Glauberman: At the proper time we will find this out.

Mr. William Fondeller: On the question of whether we should liquidate.

Mr. Glauberman: We are not up to that question yet.

Chairman Ryan: We will take that matter up. If anybody has any legal question to ask Mr. Glauberman, that is all there is before us.

Mr. Glauberman: May I suggest that someone make a motion that you appoint inspectors to immediately proceed to examine the proxies as well as anybody here who has no proxy or is a stockholder, let him give his name, and we will go in a separate room, and the inspectors can come in with a report as to what they find—how much is represented in this meeting, because I do not want to proceed to find out later that we haven't got the proper amount of shares. Frankly, I think we have, because I checked up this afternoon on the proxies plus the one hundred and seventy-two thousand shares, and I know that there are fifty-one per cent. or around that figure, but I want to make sure.

Suggestion, Mr. Chairman.

M. : I make that motion.

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Mr. Rosenfeld: Before the motion is made, may I suggest this: I have had an extensive experience. We know that such a careful check will take a long time. Surely the people in charge of the meeting, like Mr. Glauberman, know approximately whether they have that majority, and if they feel they have that majority, I move that we defer this careful check until the end of the meeting, when the consensus of opinion is to authorize Mr. Glauberman one way or the other. Then we can worry about our technicalities.

Chairman Ryan: I think we have.

Mr. Rosenfeld: I move that we take your opinion for it at this time, subject to check at the end of the meeting.

Mr. Sterner: What percentage do you think you have?

Mr. Glauberman: I think I have fifty-one per cent.

Mr. Sterner: Do you know exactly how much?

Mr. Glauberman: The only thing we need, under the law.

Mr. Sterner, my answer to you is I am not interested about how the stock will be voted; in fact, I don't care whether it is fifty-one per cent. one way or the other. What we need to know is, whether we have fifty-one per cent. to go ahead with the meeting. If you will later give us the names, with the stock, we will check it, and we will know just what we have.

Chairman Ryan: The motion was on the floor that we take the opinion of Mr. Glauberman that he has over fifty-one per cent. of the stock here, and we proceed accordingly.

(Motion seconded.)

All in favor, say "aye"; contrary, "no".

The motion is carried.

Mr. Glauberman: May I make another suggestion? I think we should proceed at the same time, in order to save us later the trouble. I suggest we go ahead with our business before the chairman appoints the inspectors to proceed in checking up so while we go ahead with our business they will know what the result is. And you gentlemen who have no proxies, put in a slip of paper with your name and the number of shares owned and the address.

Mr. Samuel Miccielli: May I suggest, Counsellor Glauberman, I move you that you appoint two inspectors for the proxies and one monitor. The purpose of the monitor will be to collect the names and addresses of those persons present, with the amount of shares that they hold, and who haven't turned in proxies, so while the inspectors are in another room working on the proxies, the monitor will have his list ready for them. I think by that means we may be able to save some time.

Chairman Ryan: That is the line along which we will proceed. All in favor, say "aye"; contrary, "no".

Carried.

I appoint Mr. Cohn, and Mr. Feld, who have been working on this matter all day, as inspectors of election.

Will the gentlemen who made the motion, volunteer to be a monitor?

Mr. Miccielli: Yes.

Mr. Morris Leavy: Can I vote some shares for my brother?

Mr. Glauberman: No, not unless you have the authority.

Mr. Leavy: I have the authority.

Chairman Ryan: We will hear a few words from Mr. Nierenstein.

Mr. Samuel Nierenstein: Ladies and Gentlemen: While the inspectors are going about and collecting the ballots and the names and addresses and number of shares, with the monitor inspecting the proxies, I simply want to add a few words with respect to the other meeting to which reference was made.

It was thought advisable to call together every stockholder owning five hundred shares or more. The list that was furnished to the Committee was furnished by Miss Matey, the secretary, at the office of the receivers. Some eighty letters went out notifying all of these persons and inviting them to a conference, because the Vice-Chancellor suggested—in fact, openly said at the hearing before him, that when the matter came up again, and if there were any question of the checking or ratification by the Board of Directors, he would apply his acid test, and he said openly in court that that acid test meant only such persons as had an interest in the company in the form of stockholdings. In other words, whatever is going to happen to this company is either going to help or hinder or destroy the value of the stock of the stockholders; and therefore the stockholders are the ones to decide. A man voting five hundred shares or more has a very substantial interest in the company. And the matter came up for discussion as to what their attitude would be at this meeting, namely, what was best for the company. The question of liquidation and dissolution was discussed, and the further question of a proposed directorate was discussed; names were presented of persons out of the stockholders of the company

as appeared on the list—such stockholders as held substantial shares. Mr. Ryan will later report, I am sure, to you exactly what names were suggested and why, and the suggestion will be made later on that further names might be added, if it is the desire of this group that we proceed along those lines as Mr. Glauberman put it. The first question before us all as stockholders is, to determine whether we will have liquidation, or whether we will have continuation of the company, and if that is decided in favor of continuing the company, if the majority of the votes so decide, then, of course, the matter will be open for discussion as to who should be the proposed directorate, and then whatever objections there are will be passed at the time, and the entire situation will be presented to the Court.

Mr. Morris Maer: Mr. Chairman, I would like to hear the resolution that you passed at the meeting which you had with the shareholders of five hundred; what was the result?

Chairman Ryan: The meeting Mr. Nierenstein has referred to was an informal gathering of the largest stockholders, and it seems to be the consensus of opinion that a board of seven directors be elected, and we have here the names—I should say ten or twelve names on the sheet, of men who are recommended as being stockholders who would care to serve, and who were worthy of position as directors of the company to carry on the business. We will give you those names in a few moments.

M. Maer: Were there any other propositions made or suggested?

Chairman Ryan: No, sir.

Mr. Glauberman: You must be quiet. It is very hard for me to speak, even when you are quiet. You can imagine, when you talk.

The last meeting, as I have already explained, has no legal effect, as far as a stockholders' meeting. It was only for the Stockholders' Protective Committee who sent out those proxies, to give them an idea how they should vote. That is about all. You gentlemen who have not sent in a proxy can use your own judgment whether you want to abide by the recommendations of these people or not. There were several questions taken up at that meeting. If I can recall every one of them, I shall enumerate them to you.

The first question that was taken up by us: do those stockholders who came there to vote, believe in liquidation, or do they believe this company should continue? And I believe it was the unanimous opinion of about twenty-five or thirty people that were there; they voted that the company should continue.

Mr. Leavy: Can we have the names of the people who were there?

Mr. Glauberman: Yes, we have a list of every one there. I do not recommend anything, and I want to read it, but there should be no misunderstanding about it. I don't recommend anything one way or the other. Please remember that. We will read the names of those that were there, in a few minutes.

Next, a motion was made, that in considering the members of the board, no man who served on the board previously should be nominated to serve on this board. That was unanimously carried, with the exception of one man.

Then another motion was made that no lawyer should be nominated to the board. (Applause.)

I was no candidate, so it does not bother me. Then names were suggested and seconded. All the names as I recall, were names of people who have substantial stock interest, with the exception of one or two. It is my theory of this case—and only a theory, subject to the approval or disapproval of the Chancery Act—that if the stockholders will elect men who have a substantial interest in this company, who are not just merely window-dressers, who are not just mere decorations, men of intelligence, or men who will feel the responsibility, not only because they themselves invested money, but because ten thousand people have invested money—and these people, there is no special reason why they should not be on, and if they have proper qualifications, and a petition was properly represented to the Vice-Chancellor, I feel certain that if the Vice-Chancellor thinks that it would be for the best interest of the stockholders, that he would approve of such a board, and terminate the receivership. Because, if I recall correctly, the order of August 8 appointing receivers, enumerated certain reasons why the receivers were appointed, and one of the reasons given was the fact that the Board of Directors having resigned—as I understand, eight out of ten—there was nobody functioning to lead this company, and therefore the Chancery Court felt it was its duty to immediately appoint receivers to take charge of it. If you gentlemen would vote tonight on a board which the Court of Chancery can endorse, I feel certain that it will meet with the Vice-Chancellor's approval, and he will return the company to you. But don't forget the most important question to discuss before we go ahead is that the consensus of opinion here is that you want this company to continue.

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It is very important. If you want liquidation, it means this, and that was one of the reasons I objected on December 17th. The receivers who were appointed August 8, as I examined the record, I find they immediately sold quite a bit of assets of the company. They now have in liquid assets over a million dollars; that is, several hundred thousand dollars in cash and about seven or eight hundred thousand dollars in bonds. The receivers don't want this company; they want to finish their job, to give it over to somebody with the approval of the Court, or liquidate it. They, therefore, properly appeared before the Chancery Court and asked for an order to show cause, whether you stockholders want a dollar and a half per share as a first liquidating dividend, and also asked for the allowances. It was my instruction of my clients to appear and object to both, and I did so. I objected to the allowances, though I hated to do that. I hated to object to lawyers' fees. But if it is your duty to do it, even though it is disagreeable, you do it; and I also objected to the liquidating dividend, because I claim those receivers were equity receivers. They were not statutory receivers. And therefore the corporation is still in existence, and it is therefore proper for the stockholders to vote on this question. Stockholders cannot vote by going to a court room. I therefore asked that this matter be adjourned and give you the opportunity. I therefore urge upon this meeting that before you proceed with any other matter, that a motion should be presented one way or the other, whether you want liquidation or whether you want a continuation of this business; but this vote has to be taken very carefully, please. We need every name and every share. It is not going to be just a majority

here, so you will have to be very quiet and all vote. The committee who has the proxies, they will vote a certain way. I suppose Mr. Markley, who is outside, should come in and vote the way he feels, and you gentlemen here who have no proxies, should vote. If you have got proxies, just give your name and say you have a proxy. We do not want that you should vote twice. But if we cannot find your proxy, will count your vote.

Chairman Ryan: Do you want this done orally?

Mr. Glauberman: It is a question of mechanics. I believe this vote should be taken as follows: every man here and outside should be canvassed for his name, the number of shares, and what he votes. The committee should vote the amount of these proxies, and we will check up under the count later. That is my suggestion.

Mr. Rosenfeld: It is quite evident—my words will be few—that we have in this room for the most part laymen, evidenced by their recent outburst at the suggestion of lawyers not serving on a board of directors. Mr. Chairman, the thought predominating in the minds of all, I am sure, is this: If their first loss is their best loss, they want their dollar and a half. If you tell them how much money was originally put into this company, how much was lost, why it was lost; how, if your reorganize you will not continue to lose, you will get an intelligent response from them as to whether they want this company to continue or to stop right now. I therefore respectfully suggest to you and my friend, Mr. Glauberman, whom I never met prior to this evening, that we put not the cart before the horse, but that in accordance with an intelligent, logical

procedure, this meeting be informed, and I myself know nothing of the situation of which I make inquiry, and I put myself in the category of one who wants to be informed. I respectfully suggest that you tell this meeting in few words how much paid-in capital and surplus this company at the utmost ever enjoyed; what the actual value of the total assets of the company is today, or before today, and I ask you to respectfully eliminate all things like good will and office furniture and irredeemable things that are carried upon the books in such instances as this. I ask you further to indicate to them what has been lost. I ask you further to indicate to them truthfully why it has been lost, and how further loss will be eliminated. Then you will get an intelligent response.

Chairman Ryan: Has Mr. Glauberman got any data on that subject?

Mr. Glauberman: Yes, I am very glad that Mr. Rosenfeld made that suggestion. I find that the accountants for the receivers have filed with them a report of the assets and liabilities as of November 15, and also showing the assets and liabilities of July 25, 1929, and how they stood in November, 1929, showing the increase and decrease, and the net decrease. The only thing I can say is to read to you what is there. I take no responsibility one way or the other. I do not represent to you that those figures are correct, but I suppose they are correct. They are prepared by certified public accountants here by the receivers.

Mr. : What are the names of the certified public accountants?

Mr. Gluberman: Mr. Markel; there are several accountants—Markel & Co.

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November 15th is the assets and liabilities statement I have now. It is only about two months later. Nothing special has happened between November 15th and today, as far as we know, except I understand there is an order to show cause out why the Lebanon sale should not be approved.

Mrs. Kay: What has happened up until November 15th we are interested in.

Mr. Glauberman: I will show you what I have.

Mr. : May I ask if any of this stock they had in November, on the fifteenth, when the stock crash came, since then have they depreciated any?

Mr. Glauberman: The crash took place October 23rd, so that November 15th is "A. C.," after the crash. Cash on hand and in banks on November 15th, $138,178.20. Before I go on, I will say this: that there is a supplemental report filed, but not a balance sheet. I think I have that, too, and I will read that, and there will be certain changes. Certificates of deposit $190,531.72. If anyone does not understand the term that I use, please ask me.

Mr. : When you are through, Mr. Glauberman.

Mr. Glauberman: Certificates of deposit, securities at cost, schedule D, I find $716,392.90 at cost. That is not a market value. We have a schedule here of those securities, and I will read that in a moment. City and County Bonds $550,000. Deposit on contract $50,000. Notes receivable—that is the note that I understand Mr. Weinberger has with the company, $2,300,000.

Mr. : Try and get it.

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Mr. Glauberman: Other notes receivable $100,000; accounts receivable $279,740.63; notes receivable and stock subscription secured by collateral $17,375; subscriptions receivable $34,330; furniture and fixtures, $2,331.45; prepaid insurance $32; organization expenses still on the books of the company $157,017.06; total assets $4,535,928.96. Those are the assets of the company.

Liabilities—I find on November 15th—which will be changed later, as I will show you—$1,400. I suppose that meant receivers' liabilities. I also have here—

Mr. : Is that the only liability?

Mr. Glauberman: That statement shows that, but I have a supplemental list which will give a list of the accounts payable. If you wish, I will also read how it was July 25th.

Mr. : No; who wants that?

Mr. : We want the kind of securities they have.

Mr. Glauberman: First of all, there was a schedule where the cash is, on November 15th, $138,178.20.

The securities are as follows:

1017 shares of Franklin Washington Trust Co.; paid $83.88 per share—that is cost to the company—totalling $85,291.30;

1130 shares of Equitable Mortgage & Title Guarantee Company, paid $159.47, totalling $180,200;

70 shares of Hobart Trust Company, paid $82.03, total $5,742.10;

20 shares of Franklin Trust Company, Paterson, paid $285 per share; total $5,700;

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10 shares Perth Amboy National Bank, paid $190 per share; total $1,900;

658 shares of Hamilton Trust Company, paid $377.23 per share, total $248,200;

20 shares of Lebanon National Bank, paid $325.34, total $6,506.80;

338 shares of New York National Bank & Trust Company; and

318 shares Participation Certificates of Guardian Trust Company, Newark; total $36,035.70;

62 shares of Interstate Trust Company, New York, paid $60.84 a share; total $3,812;

100 shares of Franklin Fire Insurance Co., Philadelphia, paid $266 per share; total $26,600;

100 shares of Bank of Manhattan, New York, paid $902.50 per share; total $90,250;

500 shares of Seaboard Fire & Marine Insurance Company, paid $27.75; total $13,875;

100 shares Phelps-Dodge Corporation, $85 per share, total $8,500;

4200 shares, Par Value, of A. Fink & Sons Inc., Newark, 6½% bonds, due May 2, 1942, paid $90, total $3,780.

The total of securities is $716,392.90. I am not an expert. I purposely read it to you so you will make your own comparisons tomorrow, or call up your broker. I don't think any suggestion should be made, and I don't think anybody should take anybody's suggestion until he finds out himself.

Mr. Morris Clausner: I think a suggestion should be made, because you ask us tonight to vote as to whether the company should be liquidated or not. If this stock isn't worth anything, then our opinion will be guided by that.

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Mr. Glauberman: Mr. Clausner, I do not think that the Stockholders Protective Committee, when they undertook the job, represented themselves to the stockholders that they are experts in values or that they represented themselves to you as giving you advice. Use your own judgment. If you think this is worth nothing, and you then decide with what we have that you should vote for liquidation, vote for liquidation; but do not impose upon us the burden to advise you one way or the other. Please don't burden me with it. I am certainly not an expert in securities. I gave you the names.

Mr. Clausner: Then your answer to my question is, that the committee has not—is not in a position to tell us today what the market value of these stocks is?

Mr. Glauberman: Are they in a position to tell them?

Chairman Ryan: We never attempted to find out.

Mrs. Kay: I understand from certain previous records that there were several hundred shares of Hobart Trust Company stock which have been sold. Is it possible if this organization continues, to recall those shares of stock? They were sold at only fourteen dollars a share, which is absolutely wrong.

Mr. Glauberman: At least in my experience there isn't a lawyer in the country who will stand there and answer you very difficult questions of law "yes" or "no". My answer is: I don't know now, but I will meet with the situation and I will look up the books, and if I would find it, I will give you an answer; and if I cannot find it, I will tell you to go somewhere else.

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Mr. Irving Strauss: Just as an example, I would like to illustrate just one thing.

Mr. Glauberman: May I go ahead? I am in the middle of reading a statement. If you have any comments to make which do not pertain to my reading, I wish you would reserve them for a little later. I realize that people have all sorts of ideas, but let us proceed as much as humanly possible in an orderly fashion.

Mr. Jacob Bachrach: I want to understand one item that this gentleman asked, which was very intelligent. I know of one item on the statement, Ladies and Gentlemen, six hundred and some odd shares of the Hamilton Trust Company in Paterson, that the New Jersey Bankers paid—I happen to know what they paid for it—$375 and expenses. Three days after New Jersey Bankers bought it, the Hamilton Trust Company offered them $410 per share, through me, and the New Jersey Bankers refused to sell it. If you liquidate this company and you offer that stock at the market at a forced sale today in liquidation, I am in doubt, in the present situation, with money being so tight, if you can get more than $200 a share; but if that stock is held by good people, whom you elect as good people, as directors, I am positive that that stock should sell for no less than $500. Today there are no normal times; right now we have no normal times. There is no market for the best securities. That stock is always worth what it was worth a year ago and more, but the situation for cash now, is very hard to sell. That is why we should proceed very carefully in the suggestion of some people of liquidation, because we will get ten cents on the dollar; maybe we will get the whole dollar.

Mr. Glauberman: May I say this: this gentleman's special question and Mr. Bachrach's answer have nothing to do with my reading the statement. This is going to be when you take up the question of liquidation. Furthermore, remember I made a promise to one of the stockholders that she will have a nice sleep tonight. It is ten minutes to nine. The way you are going ahead, we will stay here until four o'clock in the morning. So please remember that. Let me proceed orderly.

Mr. Goldsmith: In view of the fact that the gentleman has got such valuable advice, assuming that he knows what he is talking about, I would like for him to tell us what the book value of that stock is, that he thinks will be worth $500.

Chairman Ryan: We will come to that later.

Mr. Goldsmith: We will then know what we are being told, whether there is any reliability to it. I do not question the gentleman, but I want to know if he knows.

M. : I want to make a motion and request the Chairman not to recognize anybody on the floor until this gentleman has read that report.

(Motion seconded and carried.)

Mr. Glauberman: Next, Schedule 3: Bonds which this company has:

City of Newark Bonds, 6%, due January 8, 1930, $20,000.

County of Essex Bonds, 5¼%, due March 15, 1930, $55,000.

City of Newark Bonds, 6%, due March 15, 1930, $50,000.

City of Newark Bonds, 6%, due January 8, 1930, $425,000.

That makes a total of $550,000 in bonds.

Schedule 4—Other notes receivable:

Irving L. Kaden, $2,250, due May 24, 1929; given for ten shares of Lebanon National Bank. So I suppose that note is not paid yet; so it is past due.

Frank Van Syckle has a note of $30,625—that and the next notes I will give are in connection with the purchase of the Perth Amboy National Bank stock of $30,625, due March 5, 1930. The general total of that is $100,000, minus $2,250 which I just read. Those are notes given by people who purchased Perth Amboy National Bank stock.

Mr. : Give the names.

Mr. Glauberman: Ira R. Crouse, $8,750, due March 5, 1930.

Harry Conard, $8,750, due March 5, 1930.

Sam Polkowitz, $17,500, due March 5, 1930.

W. Guy Weaver, $4,375, due March 5, 1930.

Max Goldman, $17,500, due March 5, 1930.

Charles N. Peterson, $5,250, due March 5, 1930.

Thomas L. Hanlon, $3,500, due March 5, 1930.

Thomas L. Hanlon, $1,500, due October 26, 1929.

Total, $100,000.

Mr. : Are they secured?

Mr. Glauberman: Given in connection with the purchase of Perth Amboy National Bank stock. I didn't prepare the report; I am taking the figures.

Mr. : Was collateral put up for the notes?

Mr. Glauberman: I do not know. The statement shows nothing but "given in connection with purchase of Perth Amboy National Bank

stock.'' Maybe Miss Matey can tell me. I am informed by a gentlemen here that stock in the bank is held as collateral security for the notes, that total $100,000.

The next schedule is Schedule 5, accounts receivable:

From the Washington Trust Co., July 1, 1928, dividend—I suppose which were not collected—on 18,174 shares, $13,630.50.

From the Hamilton Trust Company due dividend on 15 shares, $90.

From the Hamilton Trust Company, due dividend on 658 shares, $9,212.

Hobart Trust Company, due dividend on 70 shares, $140.

From R. B. McMillen, balance due on subscription accounts, $10.50.

From R. B. McMillen, carpet purchased, $100.

From Franklin Trust Co., dividend on 20 shares, $1,620.

Miscellaneous, accrued interest on subscribers' notes receivable to November 15, 1929, $844.21.

Adelson Ryon & Co., balance of account, $19.90.

Allied Bankshares Co., balance on account, $24,728.75.

Miscellaneous, accrued interest on bonds, $5,561.54.

Miscellaneous, accrued interest on notes receivable, $1,154.71.

Hobart Trust Co., accrued interest on certificates of deposit, $2,008.52.

Alexander Goldring, balance due on purchase of 2,564 shares of Lebanon National Bank, $220,500.

Those total $279,740.63.

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Remember I am giving you the schedule of the bulk items which I have already read from the balance sheet.

Schedule 6, notes receivable on stock subscriptions. Morris Schoenbrun—

Mr. : I move we pass that, to save time, on the ground that that may not be collectible, and it is a small amount.

Mr. Glauberman: It was all due May 25, 1929.

Morris Schoenbrun, $6,000, due May 25, 1929.

Herman Verag, $6,000, due May 25, 1929.

M. Friedman, $5,375, due June 2, 1929.

All past due, $17,375.

Accounts payable: The only items shown on this list of accounts payable are: Hobart Trust Co., balance due for two shares Service Trust Co. stock not surrendered upon amalgamation, $500.

Arnold Markel & Company, due for services to March 31, 1929, $900.

The supplemental report is not a balance sheet which contains all receipts and disbursements.

The cash on hand is as follows: On November 30, 1929, there was $231,203.83.

I am looking for a list of accounts payable, and will give you that later. It is very important.

This is a copy made by my boy of the records filed by the receivers. We refer to our clerks as "boys."

The total accounts, claims and demands against the New Jersey Bankers Securities Company total $64,666.72. Those are the claims filed with the receivers. If you want me to, I will read the items.

Mr. : No.

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Mr. Glauberman: But I will say this. The largest item is an item of $38,406, due James & Rogers for legal services, and if I am informed correctly, the accounts payable that we have here, of $64,666 is just a list filed by the receivers. It doesn't mean it is a valid claim.

Then there is also this statement: there is a pending law suit by John Warren against New Jersey Bankers Securities Co., who claims damage of $306,108.66. This suit is involved in the Chancery suit of Elin *v.* John Warren. The Court of Errors reversed Vice-Chancellor Bentley. The cause was tried before him on final hearing. The suit is one for injunction, not yet decided.

Then there is another claim of Baer *v.* New Jersey Bankers Securities Co., damages on sale of stock, $100.

Mr. Rosenfeld: What does certificates of deposit mean—$190,000; what does that mean?

Mr. Glauberman: It means that you deposit money in the bank, but instead of having it in the safe, you get a certificate of deposit, which you can withdraw at any time.

Mr. : The same as cash.

Mr. Rosenfeld: Isn't that a liability as well as an asset?

Mr. Glauberman: No, it is cash in the bank. I am informed by the experts in finance, it means a time deposit. We have a lot of money—lawyers seldom have much on deposit. If you have a time deposit for a month, you get interest on it, and the bank obligates itself to pay you that.

Mr. Rosenfeld: Must that not eventually be paid out?

Mr. Glauberman: No, it must come in.

Mr. Rosenfeld: On what contract is that $50,000?

Mr. Glauberman: The $50,000 item, looking over the record, I find was given by the receivers to the Lebanon Bank as an additional amount, in order to save the investment. It is a fifty thousand dollar item deposited by the receivers. It is an amount that the Lebanon Bank owes the receivers of the New Jersey Bankers.

Mr. : I understood that to be a deposit made by a party who has agreed to purchase from the receivers.

Mr. London: They deposited $50,000 on the purchase of the stock, and they still carry it as an asset.

Mr. Glauberman: I guess I am wrong. The only liabilities of this company are the liabilities I just read to you, $60,000, and the claims that are now against the company, against which you have certain assets of cash, several hundred thousand dollars in cash, $700,000 in bonds, and then you have some other securities.

Mr. Rosenfeld: The item of $2,300,000 is due from Weinberger?

Mr. Glauberman: Yes.

Mr. Rosenfeld: Can anyone intelligently, and without holding him to any secrecy or repeating outside of this room his opinion, indicate to the meeting—and I ask this because there is no way that the rest of us can ascertain it—whether or not any part of that note by any one of us would honesly be considered an asset that could be realized on to any extent?

Mr. London: Yes, I can give you that information. In the contract with Weinberger, of which

I have a copy here, he gave at that time $100,000 in cash on a certificate of deposit of a bank approved by the president of the company, to be held in escrow until the acceptance of the offer, and the offer having been accepted, the money was given to the company, $100,000, when the offer was approved, which he has already paid. A mortgage for $200,000 on the Belnord Apartments at Passaic, New Jersey, $100,000 mortgage on the Gregorian Court Apartments in Passaic, New Jersey; 1,000 shares of the capital stock of the Hobart Service Trust Company, which is being held, although the sale was made at $14 a share. I am informed that the stock of the Hobart Trust Company is now worth $40, so a thousand shares would seem to mean something. And $200,000 worth of life insurance on Weinberger's life. In addition to that the acceptance of that contract, there has been given a bond by the old directors of the company, a bond of $50,000 from nine directors, $50,000 each, which is still in existence and held by the company, totalling $450,000. 172,000 shares of stock—there are some six hundred and twenty-seven thousand and some odd shares issued and outstanding, and we hold 172,000 shares of that stock which has been issued to Weinberger; so in the event we don't collect the moneys, the $2,300,000, you can consider that the stock is not outstanding; there would be some 450,000 shares of stock outstanding as against $4,000,000 in assets. At the time of the proposed merger with the Equitable Finance Company, Price-Waterhouse made a report in which they showed that the assets of this company as of January 31, 1929, which is some ten months before the break, was $4,300,000, and they wrote off the $2,000,000

as not collectible. At that time it was charged that that recommendation was made in order to permit the merger, and to clear Weinberger of that liability, which is still on the books, and they give the average of bid and asked price as of that date, January 31. Let us consider this—

Chairman Ryan: When is the expiration of the Weinberger agreement?

Mr. London: It is payable on or before three years from date. It was dated in April, 1929, which means 1932.

Mr. Glauberman: Mr. Miccielli who was appointed monitor to get the names of people, says that he cannot go ahead and get those names, and I will suggest this, that we take an intermission of five minutes, to permit him to get the names.

(RECESS.)

Mr. Rosenfeld: One more question, and then I am through—the item of accounts receivable. We have gotten on the Weinberger account, and presumably we seem to be satisfied that we have those securities. For instance, the insurance policies—have those insurance policies been lapsed, or has the premium been paid? Just what is the condition of that?

Mr. London: There has been nobody for the past six or seven months taking care of the company; nobody knows what has happened.

Mr. Cooper: We don't know whether it is worth a nickel.

Mr. London: In the report of Price-Waterhouse, excluding $2,300,000, they value the assets at $4,300,000.

Mr. Cooper: That was January, 1929. We are not interested in that. We are interested in what we are going to get today. For the present we must forget Weinberger's liability, because we don't know whether the mortgages were foreclosed, whether these houses are in existence, whether the policy is in existence, or whether the notes are any good.

Mr. : Are those mortgages on these houses?

Mr. London: Yes, second mortgages.

Mr. Glauberman: Mr. Rosenfeld, you asked a question.

Mr. Rosenfeld: You report two hundred and some odd thousand dollars as receivable from this man Goldring, I understand; this morning, I think, I received a notice that Goldring did not indicate that he would go through with his contract—I may be wrong; I stand corrected, if I am—and that someone was placed in his stead. Is any one in a position to inform the meeting how much the new gentleman is going to pay for a fulfillment of Goldring's old contract, so we can fix a figure on the accounts receivable.

Mr. Glauberman: I am sorry; I have no more information than you have. I have an order to show cause, which you have all received, and I know no more about it than you.

Mr. Rosenfeld: What is the order to show cause?

Mr. Glauberman: You can read it for yourself. I don't want to spend the time with detail. Details are fascinating; we can talk about the $2,300,000 all night, but that is not the purpose of our meeting. We must go through one way or the other; first, go through with the ques-

tion of whether you want liquidation or whether you want the company to continue. I therefore suggest someone make a motion to that effect. Let us go on.

Mr. Cooper: On this question of asking for a motion: I don't want to have any motion crammed down my throat; neither does anyone else. Before we go into any motions, I think we are entitled to know what this committee feels can be done with the assets. If nothing can be done, why the devil go ahead and waste everybody's time and everybody's money? If you have plans to present to this meeting whereby you can show this meeting that the New Jersey Bankers has the right to exist, has the right to live, has every possibility of earning money, and not losing money, if you have some means of showing us that these securities will increase in value, or will be saved in value by continuing, that is one question. If you have no detailed plan, I say you have wasted our time and wasted your time. No motion is in order, and nobody should try to make a motion until you have outlined to this meeting just how that board if elected—what it will do, what it contemplates doing, what it believes will be the result. Until that time, we have no right to ask for any motion on that score. If you inform us, and I believe the rest of the people in the house will agree with me—if you will show us both sides of the story—you have showed us nothing; you have merely shown us so far a report, which merely says they paid this price and that price and the other price, which means nothing. Show us what you intend to do, what can you do, and what will you do, and we will decide the rest.

(Remarks followed by noise and plenty of it.)

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Mr. Glauberman: This committee voluntarily came into existence to protect the interests of the stockholders. They have nothing to sell you one way or the other. They are just as much at sea as you are in this proposition. It is not our burden to sell you and explain to you. If you have a large interest in this company, you could just as well have gone to the receivers and asked and get your information and be prepared tonight.

Mr. Cooper: You are not answering my question.

Mr. : I move that we respect the Chair.

Mr. Glauberman: Mr. Cooper, the reason I said that we need a motion, is this: Unless there is a motion on the floor, you cannot talk one way or the other. Nobody wants to rush this thing through. If we have something to say against liquidation and want to ask the question, that is the time to make the speech. I think you are out of order, because it was not proper before we make the motion. Somebody might have moved "We want liquidation"; someone might have moved that he wants the company to continue. Then we will be prepared to discuss it.

Mr. Sigmund Friedman: Information should be given before a motion.

Mr. : I make a motion that you respect the Chairman and abide by his ruling.

Mr. Cooper: The motion is out of order. Just let me make this point. I say this: in order that the motion be made intelligently, and in order that the maker of that motion know whether the motion should or should not be made, I say that it is the duty of the Chairman, or that

committee, to frankly put before the house what they believe can be done by this company; because it is material. If this company cannot go on, if they gain nothing by going on, there is no use of going ahead before that motion is made. And if you want to be frank and fair and aboveboard, you will tell this meeting just where you people stand in opposing any information as to how we should vote or make the motion. You must have some idea. Did you just call us together to ask us whether or not the company can exist, or did you go into the matter and find out whether this company has any chance to revive?

Chairman Ryan: Did you read the purpose for which the meeting was called?

"TO THE STOCKHOLDERS OF THE NEW JERSEY BANKERS SECURITIES CO.

Notice is hereby given by the undersigned three stockholders of the New Jersey Bankers Securities Co., having voting powers, that a meeting of the stockholders of said company will be held at the First National Bank Building, 1 Exchange Place, Jersey City, N. J., on the 14th day of January, 1930, at 7 P. M., for the following purposes:

1. To elect a Board of Directors to qualify and serve in accordance with the provisions of the Certificate of Incorporation, and the By-Laws of the company, and the laws of the State of New Jersey.

2. To authorize by resolution the newly elected Board of Directors to petition the Court of Chancery to vacate the receivership and restore the property of the company for its administration.

New Jersey State Library

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3. To authorize the newly elected Board of Directors to, thereafter, take such further steps as they may deem necessary for the preservation of the assets of the company.

4. To authorize the Board of Directors to take such steps as shall be necessary to carry out and put into effect the purposes hereinabove stated.

This call is issued by three stockholders pursuant to section 46 of the Gen. Corp. Act of the State of New Jersey.

Charles J. Ryan
Frank S. Winston
Joseph C. Humbert

Dated: December 30, 1929."

Mr. Cooper: I want to know whether you know whether this company can exist or go ahead. That is merely a gesture on your part.

Mr. Rosenfeld: I second the motion and I ask permission to state these very few words: Excitement will get us no place; cool level-headedness will protect our interest. I thank Mr. Glauberman and I thank the other gentlemen who have so conscientiously assembled the data that Mr. Glauberman appears very weary from having gone through. Gentlemen, express your appreciation by thanks and respect to these people who went to the trouble of assembling that batch of papers and data that he has laid before you. It is very easy to criticize; it is very easy to sit here and listen a few minutes to what I am sure it took Mr. Glauberman and Mr. Ryan hours to assemble. I thank you for giving me these very clear and concrete facts. And I make this statement to you: when you indicate to me such items as cash, certificates on deposit, securities and the

rest of the bonds, I have assessed my own appraisal on them, and I have done it very conservatively. I have come to the conclusion that there are, if properly taken care of, like any ordinary business man would take care of his business, possibly $2,900,000 worth of assets more or less which could be realized, and that is a very conservative figure. I have listened very attentively to your report as to the number of shares outstanding. I have accepted Mr. Leonard's statement and observed, when I have gone through the number of shares, that the $2,900,000 must be divided by, I have considered Mr. Weinberger and his contract in default, and I therefore only divided that by 450,000. That indicates to me a net value per share—if the business is run with the care that you run your business, or I run my business—of six and one-half dollars per share. That is not guaranteed by me or by these people who are giving you this information. Under those circumstances, may I voice myself on behalf of myself and on behalf of those that I represent? I can ask you for no more guarantee than you can ask me, but on paper, and that is as far as you can go, or I can go, or anybody else can go. I am satisfied to endorse the continuance of this proposition, providing you convince me that those in whose hands this company is going to be entrusted know their business, by their past activities, their personal condition and personal reputation in the business community, because of their familiarity with these affairs. What is the use of our discussing whether any premium on the life insurance was paid? It is certainly evident to you that if the $200,000 life insurance policy is to be preserved, a group of men have got to go in there, and go in there immediately, and if

it hasn't been paid, we must do what you and I do, to make it an asset. They cannot give us a guarantee to reinstate it. If this mortgage has been foreclosed, it must be because of some default. The right men have got to get hold of it. I can see where if these facts as indicated are proved, we may be able to realize six to seven dollars per share; whereas, today they offer me a dollar and a half. In conclusion, I say, I am willing on this report to vote for a continuance of the company. I think that it would be useless for us to discuss whether Mr. Glauberman, who has done a lot of work, ought to be horsewhipped for not coming here with a written guarantee. And if you spend four more years, you cannot come here with any more definite situation, until you had worked on the foreclosure, as we lawyers sometimes must for months, before you can tell what the truth of the situation is.

Mr. Samuel Silberstein: I would like to say a few words. I own personally 2,100 shares and I also am president of a company that owns 2,200 more. I received a letter several weeks ago to attend a meeting, and after I got there—I was told that this letter went out to all the large stockholders, and when I got there I found fifteen or twenty or twenty-five people who had 500 or more shares of stock. We got into a general discussion as to what we thought ought to be done, and during the discussion we concluded that if we could get together ten or twelve names of substantial stockholders in the company, who are also reputable business men and would take charge of this company for the purpose of determining what is to be done—we didn't go into a statement, because that was useless—but how we would have to do it; because, after all, we are not going to

decide before we appoint the directors, as to what steps they will take to recover any part of the moneys spent illegally or inadvisedly. That is a matter to be taken up after the Board of Directors get in. And if there are going to be seven or eight level-headed business men, they will soon see what can be recovered and what can be done, and with that in mind, we selected, after reading off one hundred or one hundred and fifty names of substantial stockholders from the list, ten or twelve names, and it was agreed that those names should be offered here and brought before you people. The point we wanted to make was, or we discussed to some extent was, that we want directors, not outsiders, people who have their money in here, who are substantial business men, and are going to make an effort to recover that money for themselves and at the same time the small stockholders.

Mr. Samuel Sennett: I make a motion that we continue this New Jersey Bankers and not liquidate it. I have a motion here that I would like to read to the stockholders.

Mr. : Before this gentleman goes on, I think Mr. Silberstein should please mention the names of the men who have been selected—these twelve men, or ten men.

Chairman Ryan: We haven't come to that yet.

Mr. : He has given us valuable information; I think we should go ahead with it.

Chairman Ryan: We will come to the motion.

Mr. Sennett: (Reading.)

WHEREAS, application is now pending for allowances amounting to $75,000 as temporary fees for approximately 4 months' work to the Receivers and their counsel; and

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WHEREAS, there is now pending an application before the Court of Chancery for an order directing the payment of the sum of $1.50 as and for a liquidating dividend; and

WHEREAS, after careful consideration and deliberation, the stockholders have concluded that the best interests of this Company require opposition to such course in view of the fact that

(1) the charter of this company has a substantial property value,

(2) the nature and character of the purposes for which said Company was organized at this particular time have a very great property value when considered in the light of existing conditions now prevailing in the State of New Jersey with regard to charters such as this Company possesses,

(3) the earning power of the sum of money now liquid in character owned and controlled by the Company has a tremendous market value if properly invested,

(4) the only possibility of recovering and recouping some of the losses suffered by the said Company would be through the proper investment of said funds now available for an immediate investment; and

WHEREAS, after careful consideration and deliberation, the stockholders have concluded that the best interests of the stockholders require and necessitate the further continuation of said business by a competent Board of Directors, and the immediate discharge of the Receivers so as to avoid the further accumulation of expenditures, allowances and costs; and

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WHEREAS, it is the firm opinion and belief of the stockholders that the allowances requested and petitioned for in the sum of $75,000 are so unreasonable and excessive as to require and necessitate strenuous objection by the Board of Directors and their counsel,

NOW, THEREFORE, BE IT RESOLVED, that the Board of Directors be authorized and empowered and specifically directed to forthwith take all of the necessary steps to oppose:

(1) The payment of the sum of $75,000, or such sum as in their judgment may be excessive.

(2) The payment of the sum of $1.50 as and for a liquidating dividend.

This resolution is offered by me.

Mr. Silberstein: I make a motion for an amendment. He states for an investment; I move that it be changed to read "for the collection and investment of all outstanding indebtedness."

Chairman Ryan: Is there anyone who wishes to second it?

Mr. Louden: I think that in the step that I am about to take tonight, in order to justify myself in my attitude to you and myself, that I should give an explanation. I have been working on this committee under the guidance of counsel for the past several months. When I undertook the duties at the request of the few stockholders at the first meeting, I carefully stipulated emphatically to every man, that Harry Weinberger was in no way to be associated with this committee. All right. I was assured that he had none. A few meetings later, a good large attendance of some outsiders came. On my right-hand

sat a gentleman I did not know, and he was received very friendly by every member present. I have never known yet how he was invited. I did not know him; never had seen him until I heard him spoken of by the familiar name of "Harry," and then as "Mr. Weinberger." I did not like the position I was in, after having undertaken this job, so I arose and I very vigorously protested against his presence at that meeting. I think when everyone knows the attitude of the Court, of the Chancellor, expressed in court, that everything Mr. Weinberger has anything to do with—I pointed out to him that his presence at that meeting was just destroying the very work that we were trying to do, and I asked him to retire, and after a few minutes—

Mr. : A point of order. This gentleman is not talking on the motion.

Chairman Ryan: Will you keep your discussion to the motion?

Do you wish to hear the gentleman?

(Loud voices: Yes, Yes, Yes.)

Mr. Louden: After he had got up and made a cursory explanation that he had been invited—and who invited him, I do not know—I will give credit to the members of the committee, that they didn't invite him, but he was there, and I told Mr. Weinberger that I hoped that he understood clearly that I was no creature of his and perfectly independent, and would have nothing to do with anything in which the Weinbergers were associated.

We went along again for a meeting or two, until last week I got a notice of a gathering of preferred stockholders, and while Mr. Neurenstein has explained to me that I should have been there,

that it was not as a slight to me, that I should have been there at that meeting, but as it called for a meeting of those who owned 500 shares or over, I considered myself out of it, until the next day I heard of those who were at that meeting.

Now, Mr. Glauberman, you will correct me—among those who appeared in the meeting was Harry Weinberger, Joseph Weinberger—

Mr. Joseph Weinberger: I am here now, too.

Mr. Louden—Mr. Campbell and another gentleman by the name of Jackovics; at that meeting they were allowed and received and spoke, and received honorably.

Now, I think the least that can be said of any man of ordinary instinct, resting under a cloud that these four men have been under, indicted by the Grand Jury of Passaic County, the least that they could have done was to stay away from that meeting. I came to the conclusion that I was a round peg in a square hole, and I wish at this period to retire from this committee as gracefully as I possibly can. I thank you.

Mr. Rosenfeld: I want to know one thing. Does the speaker feel—and this is without any opinion on my part; I want to make up my mind as to the qualifications of the people who will shortly be nominated on your board—does the speaker feel that these people will not promote the interest of those of us who have money in this investment?

Mr. Louden: You can see the holes of the maggots as well as I. I am stating my opinion. You can judge accordingly.

Chairman Ryan: Mr. Neurenstein, counsel for the committee, wishes to be heard.

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Mr. Neurenstein: This matter which Mr. Louden has told you about, Mr. Louden discussed over the telephone with me yesterday. I admire Mr. Louden for the firmness of his position, and for his honest statement. May I say openly here that it was I who asked Mr. Louden, as a shareholder, to act, if he so desired, on this committee. He asked me a question. He has stated everything to you correctly. He said, "Mr. Neurenstein, if this committee is in any way a committee of the individual referred to, I will not act." I told him at the time and I tell him now, that this committee, consisting of Mr. Ryan, Mr. Humbert and Mr. Winston and Mr. Louden, is not other than their own actions will show. Mr. Louden has a right, as has anybody, to his opinion here. He has a right to disagree with anybody. He has a right to dislike anybody. Mr. Louden told you several things here. I must, to defend myself, primarily answer how that came about. He said Mr. Weinberger was at that meeting and was called "Harry." Well, if people know him well enough to call him "Harry," you wouldn't expect them to act as if they didn't know him—carry on a lot of bluff, to deceive Mr. Louden. Mr. Louden could have been deceived, if those were real cohorts. They would say, "Do you know Mr. Weinberger?" They all knew him. They admitted it. How was he invited? Mr. Louden said it wasn't at the instance of the committee. He was asked to this meeting because of a suggestion that he made in open court before Vice-Chancellor Backes, when Vice-Chancellor Backes said—and Mr. Ryan will bear me out; he was in court that day—the Vice-Chancellor said to him, "Will you be a director, Mr. Weinberger?" And Mr. Weinberger answered, "Why, if my name was

suggested, there would be a million oppositions to me immediately. Of course not." But Mr. Weinberger volunteered then and there to turn his efforts to the benefit of the stockholders; and Ladies and Gentlemen, it is strange Mr. Louden resents it here. I have no argument with him. Mr. Louden has a proxy to vote Mr. Weinberger's stock, the 16,000 shares, which he turned over to be voted by Mr. Louden, Mr. Humbert, Mr. Winston and the other gentleman, Mr. Ryan. Those men have his stock. He turned it over to Humbert after that meeting, because the Vice-Chancellor himself said to him afterwards that cooperation with the stockholders was necessary; that there was too much friction. He explained in open court that his shares were a block to anything; the vote would be one way or the other, and he expressed in open court to the effect that he was working with us.

Now, Ladies and Gentlemen, I don't come to Weinberger's defense or to anybody's defense. I don't come to Mr. Louden's defense—he needs no defense; he stated his position, and you could never have greater proof of the honesty of a committee of four stockholders, when one gets up in open meeting and says, "I am not going to act any more." He feels—Mr. Louden does—that somehow or other there is a mysterious, sinister influence working in the room. Somehow it is for a control. If it is for control, and if there is any sinister influence, I would say that those four men should act. They have got the votes and the proxies, but a man has a right to withdraw, and if Mr. Louden in open session withdraws, that is his privilege. He came into this picture through Mr. Shedden. Mr. Shedden was one of the first stockholders, sitting alongside of me. I said,

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"Mr. Shedden, you own one thousand shares; you bought it and paid for it. It does not seem to be worth much; you go on the Stockholders' Committee," and Mr. Shedden gave me some very fine reasons, and said, "Mr. Neurenstein, I would like to act on the committee, but if I did, this would happen; that would happen, the other thing would happen"; that there were threats against him, if he acted on the committee. "But," he said, "I can name someone who is better, who owns stock, that I know." It was there that Mr. Louden came into the picture.

Ladies and Gentlemen, in defense of this committee, and in defense of myself as counsel to the committee, I say to you, that every activity of the committee has been motivated by their own best interests, and there isn't a man on this committee, whose interest is other than to look out for the stockholders. They are not bankers, or politicians on the outside. They happen, unfortunately, like all of you here, to have stock in this great venture. They are stuck. They took it upon themselves because they have a little time to send out these letters. If these men didn't spend their time getting together with the committee, we wouldn't here have an opportunity of expressing ourselves at all as stockholders, because there have been no stockholders meeting. You haven't been asked to any stockholders meeting. The company is in the hands of the court. Mr. Glauberman has explained why, when and how. They said, "At least let the stockholders express themselves." Every one gets scared. We are a bunch of intelligent people, at least, we think we are. The Stockholders Committee feels that way. I speak for them. Let them act for their own interest. There is only

one question. There is over a million dollars in bank. To whom does that belong? To you. All of you here. Say what you want to do with it. The stockholders came in, something happened, but they either gave Harry H. Weinberger as the reason or some other bugaboo. For goodness sake, find out what is what. Go ahead; then decide, if you can, as stockholders, what your desires are. After you have expressed them, have them drawn up legally, officially; present them to the Court. Ladies and Gentlemen, the Court will act, don't worry about that, for the best interest of the stockholders, but the Court suggested—Mr. Ryan and I were both there that day; I didn't take any part in these proceedings—the Court said to the stockholders, when an adjournment was asked, "Why, this company has been in receivership hands since July—four months; that is long enough time to have expressed itself." The company had no functioning board of directors; nobody was taking care of this company. In fact, it was brought out at the first hearing, that Miss Matey was the only one in charge in the office. She was asked, "Where are the directors?" She showed resignations. She ran this huge company with ten thousand stockholders; no directors. They all ran away. "Well," said the Court, "It is necessary to take the matter into the hands of the Court, where receivers, under bond—where receivers, the custodians of the court, will watch over that money, so it should not somehow or other disappear." So receivers were appointed. But that does not prevent the stockholders from again expressing themselves. After all—I have said that before; I say again—Ladies and Gentlemen, it is your money. There is no question of

finance. I am not a financier either. I don't know anything about that. I am here as an ordinary attorney—attorney for the stockholders committee, and the final conclusion they came to, and they thought about it a whole lot, and they ask you to think about it and say, shall you today pick out from amongst you, from among the men who have their hard earned dollars into this venture, a group, which group shall say, "We want to be appointed; we want to be elected to take over all these assets, actual and contingent, and force any claims we may have, collect any funds we may have"; for whose benefit? Not for the benefit of financiers, or finance companies, but for the benefit, first of all, of ourselves, as stockholders. A man who has a thousand shares in there probably paid in $12,500, or $15,000, Ladies and Gentlemen, $17,000 maybe. You know you speak of $17,000 like that (indicating). But you can be certain that a man who put $17,000 into that company, if he is going to look into it, will look out for those $17,000 of his, if he looks out for the two or three hundred dollars of the other stockholders. That is one purpose of this meeting which was expressed clearly. There were no misrepresentations on the part of the stockholders committee. The letter that went out didn't say "We are going to consider plans and mergers and amalgamations, or what to do with the money," didn't say anything of the sort. It said, gentlemen, get together and decide who, if you so choose, shall be appointed directors, and then petition the Court through the usual channels to take over the company. That is what the stockholders committee did. And I say once again, in closing—I didn't intend to make such a long speech; I was just carried away

myself by the sincere remarks of Mr. Louden—by the honest remarks of Mr. Louden, that the committee did not oppose, when Mr. Weinberger was invited. He was invited, as I told you, at the suggestion of

At the second meeting, the little meeting, Mr. Louden mentioned Mr. Joe Weinberger, Jackovics, and some other name, Frank Campbell. That list, Ladies and Gentlemen, of those who were invited, was a list that was obtained from the secretary of the New Jersey Bankers. She took from her books every one of those men who had over 500 shares, and it didn't make any difference to me, when I advised the committee to send out their invitations, whether it was Harry H. Weinberger, or A. B. C. The record shows he owned more than 500 shares, and he was to be invited. We made that as our rule, and we made no representations. That letter was sent out to every man who had money in the company. Mr. Jackovics, according to the record, holds more than 500 shares. He was invited. Frank Campbell—you say a cloud exists over these people; that may be, but I give you simply this, lest there be the slightest suspicion, the slightest intimation of bad faith. There is none on the part of the committee. In the representation of other stockholders, they have been honest all the way through; they have given their time; they will not put in any bill for allowances. They want to look out for their holdings. They undertook the job and want to see it through.

There is one question today for you stockholders to decide. There are no outsiders here. Every one in this picture is a stockholder and shareholder, who has dollars and cents in there. It is for you to decide what the next step is. We

know one thing today: there is over a million dollars practically in cash—bonds are cash; certificates of deposit are cash. There is all that money in cash.

Mr. Rosenfeld, whom I saw here the first time tonight, I was surprised at his presentation. As Mr. Glauberman read the figures, he wrote them down and divided them and gave you the book value. You see he told you what you had. He is not an officer; he is a shareholder.

Mr. Sennett: May I withdraw my motion for a discussion of the opposition, and resolve that we proceed and make this motion include: it clearly appearing that the very serious question as to whether we should go on or stop will depend upon whether or not the right personnel constitute the board of directors, I ask you to permit me, and I ask my seconder, to withdraw my previous motion on the proposition of going ahead or stopping, and in lieu thereof that there be presented a motion that nominations be in order for the board of directors with—say how many there are; that we be told about the different nominees, and if we decide that this group of men are the proper men to carry on the destinies of the company, then I think you are in a position to get an answer to your proposition.

Mr. Glauberman: This afternoon I saw the receiver, Mr. LaVecchia. He asked me, "How long do you expect to have the books of the company in your possession?" I said, "I think by eight o'clock we should be through with them, because I don't want Miss Matey here all night." I said, "Mr. LaVecchia, I will try my best." The first thing we have will be the examination of the proxies in accordance with the books. It is now ten minutes of ten. Miss Matey informs me that

she will not stay here and the books are here in her trust. We should proceed immediately to examine them.

Mr. Rosenfeld: I move that we pay Miss Matey $25 for staying here. It is no more than fair.

(Motion seconded.)

Mr. : I move for a five minute recess. Mr. Chairman, I ask for a five minute recess, as a matter of common courtesy and decency, for everybody here.

Mr. Glauberman: Take the names of all the people that are here and their addresses and the number of shares. It is necessary to have the name and address and number of shares of every person present here, so they can be checked up with the official books, which were sent here through the courtesy of the receiver. It will take a few minutes during the recess, if in an orderly manner they will count your ballots. If you wish to vote, see that your name is there, with the address and the number of shares.

(After Recess.)

Mr. Glauberman: I have been informed by the superintendent of this building that they will shut off the power by eleven o'clock. He said he does not intend to stay all night. This is the Chancery Court of New Jersey.

This committee did not have a great deal of funds when I came in as counsel, and after December 17 I was informed that I could hold the meeting, the first thing I did—I was looking for a location that should be accessible for the New York and New Jersey stockholders—I then went to the Chancellors sitting in Jersey City and got permission from them to use the Chancery

chambers for a stockholders' meeting. I told them that ten thousand people were involved in the suit; we couldn't afford to hire halls, and this is the most accessible place. The meeting has to be held in the State of New Jersey, and Exchange Place is the nearest place. I then got permission from the Sergeant-at-Arms, who kindlly consented to stay with us here and keep the place open. We got permission from the superintendent to give us this place; let us not abuse that privilege. Let us not stay all night. Let us proceed and decide one way or the other. You can easily decide this question. Most of you have been stockholders of the company for the last two years. Please, therefore, try to get along as quickly as you can without unnecessary discussion. The tellers should go ahead and collect the names while we are going on with the meeting.

Mr. J. J. Weinberger: I think that I have been unwarrantably attacked by men who don't know me.

Mr. : Put him out.

Mr. J. J. Weinberger: I won't take more than a moment. I want to ask Mr. Louden one question. Did he ever meet me in his life? Did he ever have business dealings with me in his life?

Mr. : Out of order. Out of order. Put him out. Throw him out.

Chairman Ryan: You are out of order, Mr. Weinberger.

Mr. Glauberman: There was a motion to nominate directors. This is a stockholders' meeting. There were certain suggestions made by a committee, who met by conference in the Robert Treat Hotel. I would like first to have those names read, and nominations made for the

board of directors. Let those who know anything about them, explain who they are, how many shares they hold, and you vote on them.

Mr. London: I move discussion on the motion be closed, and let us proceed to vote.

Mr. : Will you please state the motion?

Chairman Ryan: That the New Jersey Bankers be carried on and not dissolved, and that directors be elected and empowered to proceed.

We will vote for nomination and election of directors first.

All in favor, say "aye."

Contrary, "No."

It is carried.

Mr. L. E. Cooper: The motion is illegally passed, and I object to it. My objection is that the resolution is illegally passed by "ayes" and "noes." It must come by the number of shares voted individually, as I understand you to state the law.

Mr. : How many "noes" are there? We want to vote against it.

Mr. Cooper: I say you should read the stockholders' list; let each man vote and record the number of shares; also your proxies.

Chairman Ryan: You are out of order.

Mr. Glauberman: There are ten thousand stockholders. We are putting the proxies in the record and they will be counted. I think Mr. Cooper's suggestion was a proper one. We should know who voted "No," then we will note the votes later. Let those who voted "No" give their names and the number of proxies and number of shares they own. We will check them later.

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Who votes "No," who votes against continuing?

Mr. J. Louis Mohr: 118 recorded; 271 Ryer avenue, Bronx. Isn't there a certain law in the statute that a certain number must vote "Yes," at least fifty-one per cent. must be represented?

Mr. London: No, only a quorum.

Mr. Glauberman: May I answer that question? We can only call a meeting if we have fifty-one per cent. of the stock. Then the majority of that fifty-one per cent. votes one way or the other. The tellers are working. We don't know yet. We will get all the "noes" later and know the result.

Chairman Ryan: Any one else vote "no"?

Mr. Leopold Goldsmith: How many shares I own, I don't know; you will have to look it up. 27 I think.

Mr Glauberman: A proxy means a written proxy.

Mr. Goldsmith: I have it, but I haven't it with me.

Mr. E. Van Brun: 120 shares; votes in person.

Mr. Glauberman: Remember they must be shares of record on December 24. Who else? Mr. Cooper, do I understand you vote "no"?

Mr. Cooper: I didn't vote at all.

Mr. Glauberman: How many shares do you own?

Mr. Cooper: I own six and represent three more by proxy, which I hold.

Mr. Glauberman: Anybody else?

Chairman Ryan: Is there any one else who has not voted?

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Mr. Glauberman: The reason is this: I will probably have the order to go before Vice-Chancellor Backes and tell him the story how the stockholders voted. I want to be able honestly to tell him so many voted "yes" and so many voted "no." Some were in doubt. You remember it is very important for me. I have no interest except to proceed in this matter as legally as I possibly can. So please don't tell me it is unnecessary. I have that responsibility, and not you, and therefore I say that those who did not vote, please get up and say that you did not vote, and give us your name.

Chairman Ryan: Is there anyone else who wants to vote "no"?

(No response.)

Mr. Glauberman: Therefore, do I understand that all the others, with the exception of those who voted, and those who did not vote at all, are they in favor; is that the understanding?

(Cries of "yes," "yes".)

Therefore, I will report to the Vice-Chancellor, after we check up the proxies, that all voted in favor, excepting the following, who voted "no".

(Right, right.)

Chairman Ryan: Nominations are now before the meeting.

Mr. Glauberman: I hope you will pardon me for being so persistent, and insisting on this matter.

I put in one hundred and fifty hours of work so far in this case, and who knows how many hours I will have to put in. I do not want on account of any legal technicality to lose this company. I examined the law and I find this, that the by-laws provide that the Board of Directors should con-

sist of not less than five and not more than twenty-five. There is no provision in the by-laws providing that they must be residents of the State of New Jersey. Therefore, if you have people whom you think are qualified, whether they live in New York or New Jersey makes no difference. I also want to tell you that the recommendation of the committee of those five hundred, recommended there should be a board of seven. Until now there was a board of ten. I therefore suggest that the first thing the chairman should do, is to read those names and recommendations of those people, and then let us have motions from the floor as to those names, then we will take up any new names, and then we will take the vote.

Now, Mr. Chairman, will you please read the names?

Chairman Ryan: It has just been called to my attention that the lights will be turned off at eleven o'clock.

The gentlemen whose names were submitted and considered and passed upon at the preliminary meeting of the large stockholders, held last week, are as follows. Most of them are here and they will probably present themselves and speak for themselves.

Mr. Hyman Kramer
Mr. Roscoe Strickland
Mr. Samuel Kipnis
Mr. Samuel Silberstein
Mr. Samuel Kappel
Mr. Frederick Christie
Mr. Emanuel Kaplan
Mr. Charles J. Ryan.
Mr. Samuel Brimberg
Mr. Jacob S
Mr. Frank H

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Mr. Frank S. Winston
Mr. Frank Hughes
Thirteen names.

Mr. Louden: You can strike Mr. Winston's name off. I spoke to him today and he will not serve.

Mr. Bellet: Mr. Hughes will not serve.

Chairman Ryan: Mr. Bellet says Mr. Hughes will not serve; we will take him off.

If it is the pleasure of the meeting, if these gentlemen are here, they will probably present themselves, and after that we may have other nominations.

Mr. Louden: I suggest we have other nominations now.

Mr. Charles Schwartz: I nominate Mr. Leon London.

(Motion seconded.)

Mr. Benjamin Boscin: I recommend that gentleman over there, who did a lot of talking, Mr. Rosenfeld.

(Motion seconded.)

Mr. Rosenfeld: May I have the privilege of nominating to the board two very substantial stockholders in this corporation, two men of high integrity and business sense—Mr. Daniel Fraad, and over here on my right, Mr. Josef Socolof. I offer my full cooperation to this organization without the necessity of constituting me on the board. I feel that I can serve outside of the directorate, and I recommend these two men, and you will have, in addition to what little I can do, those men acting for the organization under those circumstances. I pledge you my aid, even though I am not on the board.

Chairman Ryan: Thank you.

(Last two nominations seconded.)

Mr. Samuel Hockenstein: I nominate Mr. A. M. Grill.

(Motion seconded.)

Mr. : I nominate Mrs. Lillian Kay.

(Nomination seconded.)

Mr. : I nominate Abraham Friedland.

(Nomination seconded.)

Mr. : I move the nominations be closed.

(Herman Kleinhaus nominated and seconded.)

Mr. H. S. Reel: I move the nominations be closed.

Mr. : I wish to nominate Mr. Henry Louden.

Mr. : I nominate Mr. Quint.

(Nominations seconded.)

Chairman Ryan: A motion has been made to close nominations. All in favor, signify "aye." Contrary, "no."

It is passed.

Mr. Glauberman: I would like to have the tellers immediately examine the books and put opposite the amount of shares they have according to the books. The Vice-Chancellor intimated that he will consider only that type of men who had a substantial interest in this company. There are many wonderful men around, but that is his idea, to have men who have invested, and I would suggest immediately that the tellers proceed to check up from the books of the company.

Chairman Ryan: The first name on the list I read about ten minutes ago is Mr. Hyman Kramer.

Is he here?

Mr. Kramer: I don't know whether it is in order for me to tell you anything about myself. I am in the lumber business in Clifton, New Jersey. I have 2,000 shares. I have been in the lumber business in Clifton for the past six years, and prior to that I was in the flour business in Clifton for seventeen years. I would rather have somebody else to find out about my reputation than for me to stand here and tell you about it.

Mr. : O. K.

Chairman Ryan: Is Mr. Strickland here?

(No response.)

Anybody speak for him? I understand he is head of Orvis Brothers & Co., Newark, a stock exchange house. I understand he has over a thousand shares.

The next one is Mr. Samuel Silberstein.

Mr. Silberstein: I have 4,300 shares. I am in the importing business in New York City.

Chairman Ryan: Mr. Samuel Kipnis. He owns 3,500 shares.

Mr. Kipnis: I want to tell you, Ladies and Gentlemen, that I kept very quiet here tonight, because I happen to be one of the fortunates to attend the first meeting in the office of the New Jersey Bankers, about a year ago. I had to get the news from the meeting from the ground floor. They were on the fifth floor, and I am glad to be able to at least look every one in the face and enjoy the argument we had tonight.

I am in the corrugated paper business. I am president of an organization with three and one-half million dollars. I represent here tonight 3,500 shares paid in cash.

Chairman Ryan: Mr. Samuel Kappel.

Mr. Kappel: I have 500 shares. I am in the clothing business, president of the company, the Howard Clothes; we have a chain of stores.

Chairman Ryan: Mr. Frederick Christie.

Mr. Christie: I hold 1,700 shares and connected with F. W. Woolworth Company, and been with them for twenty-one years.

Chairman Ryan: Mr. Emanuel Kaplan. Is he here?

(No response.)

Mr. Samuel Brimberg.

(No response.)

Mr. A. M. Grill: I speak for Mr. Samuel Brimberg. I think he is the largest independent stockholder in this company. He represents 5,000 shares of stock, which he paid for in cash. Mr. Brimberg is a very responsible business man. His health does not permit him to actively participate in the affairs of the company, and he asked me today to come here and to serve on the board if he was nominated and elected. I am a lawyer by profession. I do not personally desire to be on this board, except if I can be of service to Mr. Brimberg in my representative capacity and any service to the other stockholders who likewise invested their money in this enterprise. I did not know anything about the affairs of your company. I have listened attentively tonight to what you have had to say and what others say for you, and it does seem to me that if the figures given here tonight are correct, that it is for the best interest of this company that it continue existence, rather than receive a dollar and a half, as I understand, which has been offered.

I do know what Mr. Brimberg's sentiments are in this matter, but he does say to me, and

asks me to say this to you, that if elected on this board, that his only interest is to see whether or not this company should continue after he gets on there or should be liquidated. It should not be forced by receivers to be liquidated.

Mr. : I know Mr. Brimberg very well, and he is a very very nice man.

Chairman Ryan: My attention has been called to the fact, by the sergeant-at-arms, that this room will close at eleven o'clock.

The next name is Is he here?

(No response.)

Mrs. Lillian Kay. We all know her by now.

Mrs. Kay: Outside of cooking a good meal once in a while, I happen to be a private banker and financier. I have 200 shares, but I am interested in the company, and if I can be of any assistance as a director, and if I do not qualify, I would like the privilege of coming to the meetings and listening in on what is going on.

Chairman Ryan: Mr. Abraham Friedland. How many shares?

Mr. Friedland: 100 shares. I am a life insurance agent for the Equitable Life.

Chairman Ryan: Mr. Henry Louden.

Mr. Louden: 400 shares. I am owner of the Nutley Coal & Supply Company.

Mr. : Good enough.

Mr. Louden: I have found out while I was on this committee, that the shareholders of the New Jersey Bankers Securities Company is the champion sucker list in the United States.

Mrs. Kay: Will you get on that board and pull it out of the sucker list?

Chairman Ryan: Mr. London.

Mr. London: I bought 500 shares of this company's stock after the action started in the equity court, because I felt that there was some eight or ten dollars to be gotten out for each share, and I represent 3,000 shares of stock.

Chairman Ryan: Mr. Quint.

Mr. Quint: My brother and I own 650 shares and I have proxies for 1,000 more. I don't care whether I am elected on the board or not, but if you think that I am qualified, I shall be very glad to serve. My business is investments and real estate. My place of business is 1451 Broadway, New York City.

Chairman Ryan: Mr. Kleinhaus.

Mr. Kleinhaus: Resident of Jersey City; born here; treasurer of the oldest department store in the city; an accountant by profession. My present occupation makes me comptroller. I represent 405 shares, 60 in my own name, the rest, my associates.

Chairman Ryan: Frank Winston.

Mr. Winston: I am in the real estate and building business. I have myself 100 shares, and my family have 4,600. I was one of the original committee with Mr. Ryan on this committee. I am in the real estate business in New York—real estate and building.

Chairman Ryan: I only own 25 shares, luckily; I had more, but I got rid of them.

I am the secretary of the Andes Petroleum Company, in New York, and been connected with them about eight years.

Mr. Fraad.

Mr. Fraad: I represent 400 shares; I own 200 personally. I am president of the Allied Pneu-

matic Service of America and president of the Ever-Ready Service Contracting Co.

Chairman Ryan: Mr. Socolof.

Mr. Rosenfeld: He is president of the Joseph Socolof Food Company and in business for about thirty-eight years; is a member of the boards of several banks; is president of the Chamberlain Mortgage Company. His interest in those matters extends over a period of forty years. He is a good man.

Mr. Glauberman: Decide on how many directors you shall elect. There have been seventeen nominees.

Mr. : I move we have seventeen.

Mr. : I move you that instead of seventeen, the number of people suggested for your directorate, that you adopt the rule that nobody serve on the directorate unless he either owns or represents 500 or more shares of stock, and as many of the names that have been suggested—

Mr. : You are out of order.

How many directors are we to elect?

Mr. : I make a motion that we elect the seventeen directors that have been nominated.

(Motion seconded.)

Mr. : By one vote?

Mr. : I move in addition to that, an amendment that the seventeen constitute a committee among themselves, if in their discretion they deem wise, to reduce it to such number as they see fit, and I volunteer to be one of those. Let us all accept it in that spirit.

Mr. Glauberman: You can have five or twenty-five; you can have seventeen, if you want to; but in order to proceed properly, I suggest this,

that we will vote the seventeen nominated, so we will know how you voted. Then it seems we will have to adjourn the meeting, because it will take some time. We don't want to keep you until three o'clock in the morning, so we will announce the result at the next meeting. The highest number we will get of the seventeen or five or seventeen will be elected.

Mr. : My motion is that seventeen be elected.

Mr. : There is a motion before the house that seventeen be elected.

Chairman Ryan: The motion is that seventeen be elected. All in favor, say "aye."

Mr. H. S. Reel: To bring this to a head, while seventeen might be a representative number of men on the organization, we all know for any organization, especially in the situation that we are now, if we are going to have seventeen men, it is out of proportion. Let us come to some point. Every one has their interest at heart individually, whether we have one share or five thousand. Let us compromise, and I want to offer an amendment: that out of the seventeen that have been nominated, the nine men that get the highest vote shall constitute the body of new directors.

(Motion seconded.)

Chairman Ryan: Mr. Reel made a motion, and I think it was a very good one, that the number of directors be cut down, and he suggested that we elect nine directors, so that the board won't be quite so unwieldy. All in favor—

Mr. London: There is a previous motion.

Mr. Fraad: I remember very clearly what was said a moment ago, you must have a representative body. After all, we are only a stock-

holders meeting. You know what they did to stockholders. They are liable to give us some more.

I think we should pick out the people who have the largest number of shares, so that when it is represented to the Court, it will show they own a substantial number of shares, and an investment properly represented.

Chairman Ryan: We have a motion before the meting that the board of directors consist of nine members.

Mr. : No, there was a previous motion.

Chairman Ryan: If the stockholders present are not in favor of that motion, all they have got to do is to vote it down; it has been seconded.

Mr. London: There is a previous motion.

Mr. Glauberman: Point of order.

The only way, if we can understand, is to understand what you have to do. Those who sent in the proxies do not have to vote. Only those should vote who did not send in their proxies. Please put on your ballot now the names that you want. If you want seventeen, or five, or nine, we don't care; put it down.

Mr. : That is not before the house.

Mr. Glauberman: We will take care of that. Don't you worry about that. We are taking care of that. Now, gentlemen, please. I already told someone that I put in one hundred and fifty hours in this case, and wait a minute—I do not expect to get insults for it; please show me the courtesy, and listen to what I have to say. Whatever you want to do, we will do. We will have to do this in order to proceed legally. You will have to vote tonight. We will adjourn this meet-

ing, to report the result of the meeting. We just now got seventeen names. We will pass out sheets, and if you will put down you want to vote for seventeen or you want to vote for five, or nine, and put the names down, and give them to us.

Stockholders: No, No, No, No, No, No, No, No, No, No, No; Mr. Chairman, no.

Mr. Glauberman: You just listen to me. I will try to tell you the way to get this up. There ought to be a joint motion. The motion should be as follows and voted for at the same time: How many members do you want on the board? State whether you want five, seven, nine or fifteen, or seventeen, and then, if you voted for five, state your five. If you want your seventeen, state your seventeen, and it will be recorded. If the majority of the people vote they want seventeen, then the seventeen highest will be on the board. If the majority want seven, then the seven highest will be on the board. If the majority want nine, the nine highest will be on the board. We will consolidate both motions.

Stockholders: No, No, No, No. The motion. The motion, the motion.

Mr. Florhan: In view of the fact of the horrible experience we have had with nine men resigning, we cannot take a chance with nine. We must have at least seventeen, or we will have the same thing over again.

Mr. Levin: I am handing in the withdrawal of proxy of one Charles H. Muirhead.

Chairman Ryan: There is a motion for seventeen directors. All in favor say "aye."

Before those seventeen directors can be elected, it will be necessary for you gentlemen to vote them by name.

Exhibit C. 2 of May 29, 1930.

Mr. : I make a motion that the secretary cast the ballots for the seventeen.

Mr. : Out of order.

(Motion seconded.)

Chairman Ryan: All in favor of the secretary casting the ballot, please say "aye"; contrary, "No."

Mr. Glauberman: You cannot do that; that is illegal.

Mr. Rosenfeld: Please—we are supposed to be possessed of a little intelligence. Why all this hubbub? If you want your seventeen, let us get down to work, including myself. One moment; sit down everybody, please. If you want your seventeen, nobody is going to steamroller the situation, but I would respectfully suggest that we have, regardless of whether seventeen is determined on, and let us adjourn this meeting in due form.

Now, on the seventeen, my original suggestion was, constitute these seventeen an executive committee, if you please, and if those seventeen which you have nominated and put your confidence in —invested your interest in, feel that they can run the situation between them, all right; but remember, with some of us, that it is pretty hard at times to assemble seventeen men and get a quorum of seventeen, and so, to the end to protect your interest, constitute those seventeen a committee to represent you on the adjourned day, and see how many of them then should serve on this board, and let each and every one of those who isn't designated to serve on that board, show his fine manhood; let him pledge his aid with the executive committee. Doesn't that sound logical? It makes no difference to me whether I am on your board or on your committee.

Exhibit C. 2 of May 29, 1930.

I suggest that we adjourn and have the committee of seventeen report at the next meeting, whether they ought to serve, and then vote at that time.

Chairman Ryan: We have five minutes. It has been moved and seconded that there be seventeen. That has been passed.

It has also been moved and seconded that the secretary be authorized to vote for the seventeen men whose names have been submitted. All in favor say "aye".

Stockholders: Aye, Aye, Aye.

Mr. : You cannot do it.

Chairman Ryan: Gentlemen, p l e a s e—Mr. Glauberman will advise you whether it can be done.

Mr. Glauberman: The superintendent of the building just told me, if you keep quiet, he will give you another few minutes, if you conduct this meeting orderly. It is my honest opinion that you cannot vote by authorizing the secretary to cast your vote. The reason is very obvious. This board can only be elected by people who are stockholders of record as of December 24. The mere numbers getting up here and stating so and so, does not make it so. The secretary has no power. The only way you can vote is, those who have no proxies, get up and give your name, the number of shares you have; we will then know you voted. We will then adjourn the meeting to report to you the result of the tallies.

Mr. : Point of order. Can we not authorize a committee of the whole to vote for those seventeen men?

Mr. Glauberman: You have no power to authorize the committee of proxies, because only

those who signed the proxies have the power to authorize. You have a right yourself to vote in a certain way, and then we will not get your proxy. That is the way it will be done. But those men who did not come, but sent in their proxies to those people, are entitled to have their proxies vote.

Mr. : I make a motion that we start voting now and get over with it.

Mr. : I move we adjourn.

Mr. Nierenstein: There is one motion before the house now—if I may become chairman for a moment, because the chairman is busy—that is, whether the seventeen shall be elected, the seventeen whose names were mentioned. Now, in order to have such a motion have any legal effect, as I understand it, it is necessary that the vote be not by "ayes" or "noes," but it must be by individual ballot, which ballot shall show the number of shares that each man is voting. In other words, a man who had a thousand shares, votes a thousand votes, and a man who has one share, votes one vote. Such is the law, of course.

Now, there is that one motion before the house. That motion as to seventeen is now before the house. It is necessary for us to have individual ballots of each person here and of the proxies, also, voted by the committee on that motion.

Mr. : If this is the case, what was the use to call stockholders of one hundred shares or twenty-five shares, or one hundred and fifty shares, when we have stockholders of one hundred and seventy thousand shares?

Mr. Nierenstein: My dear sirs, it has got to be legal or not legal; you were advised by counsel tonight that you must vote according to ballot.

Exhibit C. 2 of May 29, 1930.

Mr. : Can we be advised how the one hundred and seventy-two thousand shares will be voted?

Mr. Nierenstein: I believe they are totalling up the shares, to see how they vote. Be patient for a moment; you will get the vote on the seventeen directors with respect to the proxies and the number of shares that are now held.

Mr. : If there are seventeen men running, and seventeen directors, it means every director will be elected, even if he gets a few shares, because the seventeen—let every director vote for himself, and he will be elected.

Mr. Nierenstein: The vote being taken now is only on the question of whether there shall be seventeen or not seventeen. The number seventeen is before the house. We are not taking a vote, and will know the result in a moment. Don't you know that there are thousands of proxies here?

Mr. Sigmund Friedman: I haven't heard any opposition here present against the seventeen to get on the board of directors from anybody. They all seem to be in favor of seventeen, whether they vote or not. It is carried unanimously, and I believe that it would be legal.

Mr. Silberstein: When we gathered together the other week the big stockholders, the discussion came up as to the number of directors that we ought to have, and in discussing that, we discussed it pro and con, whether we should have fifteen or whether we should have ten or five, or whether we should have eight, and so forth; and we finally concluded,—speaking as business men, we didn't want to go into this, in order to start trouble; we wanted to work it out in a businesslike way, and we decided, in order to be

able to function like good business men, that if you had a big bunch of men, half of the time you wouldn't have a quorum, and it wouldn't work out right; so we decided seven would be enough.

After all, don't you think that seven men, business men who have big holdings in this thing, is enough?

As a matter of fact—I will be frank with you—I was for less then seven, because, after all, maybe one head is not enough, but I figure four or five good business men are enough; but it was finally agreed that seven ought to be the amount that they would suggest to the stockholders.

I personally believe that if you should select seventeen men, you would start with a hurdle right away that you couldn't jump in the handling of this company.

Mr. A. M. Grill: The so-called large meeting, neither Mr. Brimberg nor myself was represented and we do not know what transpired at that meeting, except by report. In my opinion, seventeen is an unwieldy number to use in this enterprise, unless you feel that the integrity and honesty of the directors that have been nominated is to be questioned. You will certainly be equally served by seven or nine as you will by seventeen.

In addition, let me tell you, that as a lawyer, your principal thing here now is to convince the Court of Chancery that you have a representative and functioning body of men, so that the receivership will be lifted. Don't lose sight of the fact, that unless you appeal to the discretion of the Court, the Court will not use its discretion in

lifting this receivership, and that all of our actions tonight will be futile; we will merely be gesturing instead of acting. And I would believe—and I speak for myself and Mr. Brimberg personally—that if Mr. Brimberg or myself is elected to this board, every one of the stockholders, whether he owns one share or whether he owns five thousand shares, will be assured that his interest will be adequately represented on that board of directors.

Chairman Ryan: The lights are going out in a few minutes, so please give me your best attention.

I have just received the tally.

On the motion for seventeen, the Stockholders Protective Committee holding, according to the first tally—the final tally is being worked out now—117,000 shares by proxy. All tally running to them votes against seventeen directors, on the ground that Mr. Grill has just indicated to you, that the same is unwieldy and bulky and cannot properly handle your affairs.

Mr. : I move that we adjourn this meeting to the Robert Treat Hotel. We cannot get this place any more.

Mr. : I move that we adjourn this meeting to the Robert Treat Hotel on Thursday night, at seven-thirty P. M., of this week, Newark, New Jersey, and we adjourn to that time and place.

(Motion seconded.)

(Motion carried.)

Exhibit C. 2 of May 29, 1930.

Adjourned Meeting of the Stockholders of the New Jersey Bankers Securities Co., held at the Robert Treat Hotel, Newark, New Jersey, on Thursday, January 16, 1930, at 7.30 P. M.

Chairman Charles J. Ryan presiding.

Chairman Ryan: We will come to order, Ladies and Gentlemen. We haven't got Frank Hague here, so I hope we will get along all right this evening. Mr. Nierenstein and Mr. Glauberman will briefly rehearse the minutes of the meeting at Jersey City last Tuesday evening.

Mr. Glauberman: Ladies and Gentlemen; Mr. Chairman: Before I begin, I would like to correct the record as to a certain fact that I was asked about at the last meeting. I was asked how many directors can be elected, and I told you between five and twenty-five. The By-Laws that I had in my possession showed that, five and twenty-five. I found out early in the morning after I left you, in looking over my other papers, there was an amendment made to the By-Laws as reported in a printed case, that provided for between five and fifteen. There isn't much of a difference, but I thought I had better correct this statement on the record, that now the members of the board can be between five and fifteen.

I wonder how many are here today who were not at the meeting in Jersey City. Will you please raise your hand?

(Stockholders do as requested.)

About seven or eight, I should say.

I am not going to give you any extended report or a stenographic report of what happened there, but briefly, we have assembled in the Chancery in Jersey City, and after Mr. Ryan was elected temporary chairman of the meeting,

we proceeded to discuss, first of all, the condition of the company as shown by a statement issued by certified public accountants to the receivers.

I read from that report. The assets and liabilities, as shown there, and the detail of that report and all the schedules. I also, if I recall, read from a supplemental report as of November 30, showing the liabilities of the company are over $60,000, while the available liquid assets are over a million dollars. I then informed the gathering that I was primarily interested in two things: first, to find out the wish of the stockholders in reference to liquidation, or to continue the business; and as all of you recall, and those who were not there I will inform you now, that a majority—a great majority voted for continuing the business, and the others voted for liquidation. Of course, ladies and gentlemen, it does not mean that that represents all the stockholders. It is quite possible that many who did not come to the meeting want liquidation, so do not be surprised if people will appear in court and urge liquidation. But as far as we can tell, from an orderly meeting, that was the vote.

We then proceeded to the question of electing a Board of Directors. It was natural that several people wanted information and wanted a discussion, and it dragged out until around eleven o'clock. Meanwhile we had a problem of checking up the proxies from the books, and may I state that they worked yesterday and all day today, and I am frank to say that there are quite a lot which haven't been completely checked up yet, but we do know we had more than fifty-one per cent. We had over one hundred and forty-two proxies. Is that correct?

One of the Tellers: That is right.

Mr. Glauberman: There are over one hundred and forty-two thousand, according to the inspectors?

Chairman Ryan: Yes.

Mr. Glauberman: I don't know the number of proxies, how many shareholders sent them in, plus the amount that was present; and present the one hundred and seventy-two thousand shares held in trust by Mr. Markley. The meeting, I think was a legal meeting.

Then the question was as to the number of the directors, and I with my rather misinformation as to the number of directors, informed the stockholders at that meeting, that they can vote between five and twenty-five. They then nominated seventeen or eighteen directors.

Miss Shinitz, how many were nominated?

Miss Shinitz: Twenty was the record.

Mr. Glauberman: So the record at that time disclosed only seventeen, and somebody made a motion that all those that were nominated should serve on the board. I personally not knowing much about finance, did not discuss one way or the other. Those holding the directors felt that it should not be seventeen, and they voted down that motion. But here is what we did. In the interim we prepared a mimeograph ballot of every name that was presented at that meeting, every nominee. I then went up to the receiver's office, to check up every name, to find out how many shares they owned. I found, as you will see by your mimeograph ballots, some of them are not shareholders of record. They may be shareholders, but they have not transferred their stock on the books of the company. So far as I

know, they have no shares. We prepared that. And second, the business of this meeting is primarily this: First, to decide the number of your directors; secondly, to vote for them. May I say at this time that there were reports in the papers that we had a stormy meeting. Unless I am rather optimistic, I did not consider it was very stormy, when you think of the fact that so many stockholders have lost millions of dollars in this company; that people that came there came rather embittered and didn't know what it was all about, and everybody wanted to know, and everybody insisted on asking questions, and considering the circumstances, I think it was rather orderly.

I cannot help the situation the New Jersey Bankers is in, but the committee, under my guidance, insisted on the following: that we take no side in any issue, except only one, that every stockholder who is a stockholder of record is entitled to come to the stockholders' meeting, and I think that right should be accorded to him by the other stockholders. Any person who has a grievance should not be left out of the meeting. It is no place for it. It gives a very bad impression, because when it gets to the storm, there was a stormy meeting, or hullabaloo meeting, what does the public think? What does the Court think? It is helpless? You cannot do anything for them. We are trying our best to give them an opportunity to state his or her opinion, and I believe that the rule that governs this government should govern us, that a majority should rule. By a majority, I mean majority of stock. Unfortunately, whether you like it or not, the law is that not the individual votes, but the stock votes. If you happen to be a big

fellow, but you only have five shares, or six shares, you may be a wonderful stockholder, you only speak for six shares. If you are a little fellow and are fortunate enough to own five thousand shares, then you speak five thousand times as much as a man who has only one share. Please remember that. I would like to ask you when you get up to speak, to give your name; please also give us the number of shares you own of record; how many shares you hold by proxy. It is very important, because you can realize that those at this meeting who have a small investment, look up to the person who has invested a great deal. It doesn't mean you are not entitled to speak or have no right to make a suggestion. I frankly say that the man who has one share has a perfect right to get up here and ask for information and demand his rights, whether it is one or ten thousand dollars, but please be considerate of the others, so the others will be able to judge whether they should abide by you or not.

Secondly, I also wish you to consider this, and that is, as to the number of directors. This case is in the courts. It is not a situation where you are going to elect a board of directors and to-morrow manage your company. It is not so. Every director that is going to be there will have to pass the acid test of Vice Chancellor Backes. I don't know whether you know Vice Chancellor Backes, but among the lawyers he has a great reputation. He is a great legal scholar, and a very impartial and fearless judge; fearless in the real sense of the right way. If he thinks it is right, he will do so, whether you like it or not. That is his responsibility. I am of the opinion and I am advising the committee to act

thus, that only those who have large holdings in this company, bought before the receivership, who have big investments, should be elected to the Board of Directors. That is my opinion. Of course, I don't control, however; they will vote the way they wish. And I would like to have you gentlemen and ladies consider the same and vote for those who have a real interest, for this reason:—I don't know any of those men; I haven't a personal friend who is nominated on this board. I am happy to say that none of my friends ever bought New Jersey Bankers stock. I didn't buy any. But I have this job to perform, and I will do it to the best of my humble ability, and that is this: I want to be able to go to Vice Chancellor Backes and tell him this: the men that bought this stock are not bankers and are not security men, they are just stockholders; they have elected men and one woman from their midst, who have large holdings, and believe that they will protect their interests. That is all they can do, because I do not believe that the stockholders elected are real judges of securities. Maybe I am wrong, but I think offhand legally they are not the majority. I don't believe so. I can see by the proxies there are one hundred and forty odd thousand. If I can have them, my position will be quite strong with Vice Chancellor Backes, I hope, and then if those men will qualify before him, I am sure, then, by a proper petition, he may discharge the receivership and turn back the company to the Board of Directors. Please have this in mind in voting for the stock.

And one more thing, which is extremely important. Please express your opinion only on the matter that is being discussed, because there will be new business, and bringing up new questions,

but I will say for Mr. Ryan, "Have patience". The chairman is human; he doesn't want to appear arbitrary, because he feels everybody here has an interest in this matter, and if he tells you that you are speaking out of order, respect the Chair. It is extremely important for our own dignity, and also for the dignity of the Chair, so I will be able to go before the Court at a proper time and tell him we did not have just a big mob here, but we had people who clearly considered the business of this company.

(Applause)

Chairman Ryan: Are there any questions regarding the meeting on Tuesday night?

Mr. Reel: What is the status of the men that were nominated or were elected or merely suggested?

Mr. Glauberman: Only nominees. We have them all on the ballot. May I ask whether everybody has a ballot? We will pass out the ballots and we will decide how many you will have from those ballots. We have all the ballots prepared. And with respect to the ballots prepared, it is nothing other than a list of all the names suggested in the form of nominees at the last meeting. You will please look the list over. The number of shares shown opposite each name comes from the official books with which they were checked. It may be that they hold more stock in their names, or that they have street certificates, or they have the certificates in their pocket, or have got them later than December 24, but the company's books brought by the secretary here, show their holdings, and now I will be glad to give each one of you a ballot. Of course, you understand that such persons who are present here, who did send their proxies in,

will be voted for by proxy, because they so indicated. However, all those persons who desire to register their vote, and to put their ballot in in person, these are the ballots which will be prepared. I will just pass them out.

Mr. Rosenfeld: May I suggest that the people present be instructed that there can be discussion on the nominees, and that until such time, they need not vote.

Chairman Ryan: That is true.

Mr. Nierenstein: You note that there are lines left at the end. If any persons desire to add names, together with their votes, of course, they will be recorded by the tellers.

Mr. London: He said something that was incorrect. I would like to correct it. Those persons who sent in proxies and are here in person, can vote and withdraw the proxies, if they so desire.

Chairman Ryan: If they wish to.

Mr. Glauberman: I have just read the law; the law is that anybody who wants to cancel his proxy can do it in writing. In other words, if you will give us a piece of paper, "I hereby cancel my proxy", we will be glad not to use your proxy.

Mrs. Kay: I want to cancel my proxy.

Mr. George F. Miller: I live in Brooklyn; I have 100 shares. I suggest that we be permitted to see the gentlemen to whom we grant the proxies. I sent in a proxy but I do not know personally the gentlemen to whom I granted that proxy.

Chairman Ryan: Before we discuss the election of directors, as Mr. Glauberman informed us, the By-Laws provide for the election of fifteen

directors; so the first matter before the meeting will be to determine the number of directors we should elect.

Mr. Jacob Bachrach: I move, Sir, that we elect nine directors. I hold 1200 shares.

(Motion seconded.)

Mr. : Just a moment. Give everybody a chance.

Mr. London: I would like to speak on the motion.

Mr. I. M. Grossman: I have proxy for a thousand shares.

Mr. London: I hold 1303 shares; I have 300 with me.

Chairman Ryan: Give your own name.

Mr. London: I have 300 shares here; it is street stock.

Chairman Ryan: One share is enough.

Mr. London: Of the eighteen who are listed, or nineteen who are listed on this list, there are four who are disqualified: Samuel Kipnis, who is attorney for someone, does not hold any stock on the books of the company in his own name, so he will be disqualified.

A. M. Grill, attorney for Samuel Brimberg, does not hold any stock of record.

Abraham Friedland does not hold any stock of record. And I am quoting not from the By-Laws, but from the stock corporation law of New Jersey, and Daniel Fraad does not hold any stock of record, according to this ballot.

Mr. Glauberman: Point of order. You are not speaking on the motion. May I say the question was how many directors should be elected. That is the motion. Then we will go to the next question about voting.

Mr. London: Point of order. It is provided in the By-Laws that you may have from five to fifteen directors, and I wanted to say, that five of the fifteen before the voting takes place on this motion, that they can elect all fifteen who are still qualified.

Chairman Ryan: That is right.

Mr. London: I want to talk now upon the motion, that of the stockholders who were not directors in the company before—shall I say Black Thursday or before the receivership, are interested in this corporation just as much as those who hold 6000 shares. To some of us who only hold 100 or 50 or even 25 shares, those 25 shares may look very big. So it is primarily important to directors, who hold a large number of shares; if the number of shares which they hold means something to them, they will discharge their duties properly.

Now, a small group of men who can be controlled by one man, it will be helpful to see who held stock in this company and who have been dissatisfied up until now with the conduct of the company. I think it for the good of the company to have the directors represent not only a small block in the corporation, but to represent the vast majority of the stockholders, of whom I believe there are some ten thousand. It is sufficient to say that where 172,000 shares of the stock are held in one name, that it will be possible for that man in the small group to control the Board of Directors. I want to comment on one other thing. It is very easy to sign proxies, and some people are so desirous of signing on the well-known "dotted line", that they will sign almost anything, because they probably bought this stock and feel it is not worth much, so

they sign the proxies and send them in, without regard to the men to whom they send them, and without regard to for what those proxies stand.

Mr. Glauberman: I want to answer in reference to a legal question, about owing shares in the company. It is very important, I want to answer that, and I don't want any question about it. This list was prepared with the old names, those you nominated. Stockholders have a right to elect anybody, but they must be shareholders. That means before they can qualify as directors, they must have shares. So it is my opinion, you can elect anybody you want, but he cannot qualify and take the oath of office—if there is such an oath, I don't know—he has to have shares in the company. So as to that question I think that is settled.

Mr. London: Will you mention that with the striking out of the four names, all the other fifteen are qualified as directors?

Mr. Glauberman: I will say this: that we have tried our best to be as clear as possible. Samuel Kipnis, attorney for Bessie Kipnis, I didn't know until I looked at the record this morning, the amount given to me on that, he had 1700 shares of record, but it is in his wife's name; it wasn't attorney in fact.

Mr. London: He is not a holder of record.

Mr. Glauberman: That is right. Has the man a right to be the nominee? I say "Yes". Have you a right to be a nominee? I say "Yes". Are you able to be a director? I say "No". If he qualified, "Yes"; if not, "No".

Mr. H. P. Freedman: I hold 300 shares.

As to the By-Laws which say you can only have five to fifteen directors, isn't there a pos-

sibility that if necessary the By-Laws can be amended, so you can have more? If the stockholders think it is necessary to have more directors, I should think that would be a very easy matter to arrange. So we don't have to go ourselves by the formal by-laws.

Mr. Glauberman: May I answer your question? The stockholders have a right to change the by-laws, but the trouble is, in our notice the committee who called the meeting, did not know we were going to change the by-laws; so it is not one of the purposes of the meeting. We cannot change it tonight.

Mr. Freedman: I didn't ask; I said that in case it is necessary, can it be later changed?

Mr. Glauberman: Yes.

Mr. Freedman: As to the proceedings at the last meeting—I think in justice to the stockholders that were not present at the last meeting—I was not there—I think that the stockholders that are now present, and those which were not present at the last hearing and not here today ought to be given an opportunity to have something to say in reference to the directors. I, for one, will not be satisfied, talking for myself, to only have a limited amount of directors, as it was before, say seven, eight or nine. I feel that the stockholders, whether they have got 25, 50 or 100, or 200 or 300 shares, he should have a say either collectively or individually on the board, those that are best fitted, according to their stock, so we will be able to have a word in whatever is going on at the functioning of the business. There is another thing. The question is in my mind, whether you have nine directors or fifteen directors or twenty

directors or six, what will be the form of new business. If you are going to reorganize and everything goes through as you expect it, how will this—

Mr. : It is out of order.

Mr. Freedman: Then I withdraw that.

Mr. Glauberman: We thrashed this out last time.

Mr. Freedman: I wasn't to the meeting, so if it is out of order, I will take it back.

Mr. London: Is it in line at this time, if the certificate provides for five to fifteen directors, to limit them at this time; because you in effect change the by-laws of the company to nine; you said you couldn't change the by-laws.

Mr. Glauberman: I said we will not change the by-laws. A man made a motion he wants nine directors, because you have a right to elect between five and fifteen. That is the motion before the house.

Mr. London: I suggest we take up at this time the question of limiting the number to nine directors.

Mr. Glauberman: There is a motion before the house. You vote on it.

Mr. Bachrach: Mr. Chairman, on the motion, please: At the last meeting, at which I was present, everybody got up and interrupted people. It is a lucky thing that we can only elect fifteen, or even twenty-five. But suppose if our by-laws said five to five hundred, we would want five hundred, and we would have to hire Madison Square Garden every time we have a directors' meeting.

I move for nine directors. My reason, Mr. Chairman, Ladies and Gentlemen, is this: you

have twenty-one on this list. We should have some kind of choice to pick out of those twenty-one. If we are going to elect fifteen or the whole twenty-one, I have no choice. Take it or leave it. I want to choose, and it is a good thing to have twenty-one or fifty-one nominees, but nine should be the only amount that we should pick. And if anyone else wants to make it seven—but I believe nine should be the figure. I figure out you can do much more and better work when you get together nine or ten people, or eight people, than you can when you get twenty-one; or, as a gentleman here said, "we all want to have a say". You will have a say, as you have in your congressmen or through your senators, the people that you elect. Pick out your best nine and you will be much better off than taking them as they are, without knowing who they are. This way I have got to pick nine. The other, I have got to take them all.

Mr. I. M. Grossman: 200 shares. The reason why I seconded that motion was three-fold: first, because my own experience in bodies of which I happened to be a director, where there is a greater number than nine or ten or eleven or twelve, the body is preponderant; you cannot transact business. And then thinking minds, you can have the same amount of thinking minds in nine as you can have in fifteen, and the interests of the various stockholders in the various corporations are safeguarded just the same. If you cannot trust nine, you cannot trust fifteen. If you cannot trust nine, you cannot trust one hundred. You say one man can control fifteen, or twenty or nine, or a handful of directors, that goes by the board, because if one man can control nine directors, I take my hat off to him.

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In the second place, this organization as it stands today will not be humiliated in any way if it has nine directors, and it wouldn't please the Court if it had fifteen that weren't any better than nine. I believe in quality and not quantity. If there are any other gentlemen that wish to nominate any other directors, I believe the Chair will entertain those nominations at this time, and in so far as this list is concerned, I knew a physician on there, but from the various interests under the word "Caption" of the gentlemen that are nominated, I believe we can find nine, and I strenuously oppose fifteen, because I believe seven would be enough; but as the motion was made nine, I don't want to say anythink to the contrary.

Chairman Ryan: Any further comment?

Mr. Freedman: I would like to answer you. If this was a new organization, without anything to live down, something new, something that is now formed that hasn't a record to live down, I would agree with that perfectly. We have a whole lot to live down in this organization, and for that reason we want to have additional new blood on the directorship, and I don't agree with you as to limiting it to nine on that account. Experience shows there has been too much going about and said about the Bankers Securities Company. Even though you change the name, the fact that some of the old objectors are still connected with it, and are going to be, for that reason we want new members on the directorship, that are in good standing as to being stockholders of the company.

Mr. Grossman: I believe I should answer that question. I don't see any one member of the

old board or of any board that has ever served on the New Jersey Bankers Securities Company.

Mr. Samuel Kipnis: I must make by position clear, since it appears on the list as a proposed member of the Board of Directors.

Chairman Ryan: Suppose we take that up later when we discuss the question.

Mr. Kipnis: It may be possible to eliminate my name without discussing it at all.

Chairman Ryan: We will.

Mrs. Lillian Kavovitz: I think it has been said—and a great many people agree with me—when you attempt to elect a board of directors, that when you elect ten out of the fifteen, if you get nine or seven at your meeting always, you will be mighty lucky; if you elect nine, you are liable to get three, and the result will be the same trouble as you had before. Make it fifteen.

Mr. London: On the question of nine directors: the By-Laws provide that if there are any vacancies on the Board of Directors, the directors themselves may elect other members to the directorate; and the reason for my request to have fifteen on the Board of Directors is this: there were seven people elected at a meeting of the larger stockholders' meeting held before the meeting on Tuesday, at which they selected seven men who they proposed should be on the board. At the meeting there were proposed from the floor ten or eleven other members. I am talking about the meeting of the holders of more than five hundred shares, which was called without the knowledge of the stockholders.

Chairman Ryan: Without the knowledge of the stockholders who had less than five hundred shares.

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Mr. London: The rest of the stockholders have picked a slate of seven men, who they desire should be directors.

Chairman Ryan: Fourteen men I believe it was.

Mr. London: There were some ten or twelve new nominations made from the floor from those of the stockholders, who thought enough of their holdings in this company to be present to vote on this proposition last Tuesday, and who didn't send in proxies, because of the fact that the By-Laws provide that the directors may fill any vacancies in their number—in other words, if there were nine elected tonight, they could appoint six others who would hold over until the next meeting of stockholders. I am talking from the By-Laws of the company, and I know what I am talking about.

Mr. Glauberman: Point of order. Wait and see if I understood it correctly. It means in the event a director resigns, and there is a vacancy, then the board can fill it in.

Mr. London: There being fifteen men on this list who were nominated the last time, most of those people who were there the last time are not here tonight. Because of that I am opposed to limiting the number of directors to nine. These people who thought enough of their stock to come here and vote are those who are entitled to representation on the board. In further view of the fact that the Chancellor also knows of the tendency to sign whatever is put before you without reading it, and lawyers are just as guilty of that as laymen, and having come here to attend the meeting in person, they are entitled to be represented on that board, and the statement should be made to the Vice Chancellor that

men were elected from those who came and were present at the meeting.

Mr. Abraham Quint: Mr. Chairman, Ladies and Gentlemen: Personally I vote 325 shares in my name, but I hold proxies for a considerable number. With reference to the size of this board, I have served for many years on various boards, and my own opinion is that this Board of Directors consisting of fifteen men would be unwieldy. There is an old adage that "Too many cooks spoil the broth", and I have seen that happen at very many corporations and very many meetings that I have attended, and I think that the principle involved is not great, as to whether you have fifteen or nine. I think that we should not have a continuous discussion of this for the rest of the evening. I think it should be a very simple matter to agree that a smaller number of directors would manage this affair much better. I rather agree with the remarks of Mr. Bachrach, that rather than quantity, quality should prevail, and I would also choose my directors with a view of their interests. The man that has the greatest interest and also is able to qualify, should be elected to this board. And so, Mr. Chairman, if I may, I move that this matter be brought to a vote without any further discussion or loss of time.

(Motion seconded at least six times.)

Chairman Ryan: The motion before the meeting is the motion by Mr. Bachrach regarding nine directors being brought to a vote.

Mr. London: I move that that be done by ballot.

Mr. Glauberman: It is the only way it can be done.

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Mr. Daniel Fraad: For some reason or other I see opposite my name no shares.

Mr. Glauberman: That is right; I am sorry. I have the books here, and if we find it, we will correct it. It is not on the record.

Mr. London: Is the stock in my name? I hold proxies for 500 shares beside that.

Mr. Grossman: I would like to ask if the stock was ever transferred on the books of the company. Is a stockholder entitled to vote when the certificate is only signed in blank?

Mr. Daniel Fraad: It was issued to Daniel Fraad and paid for by Daniel Fraad.

Chairman Ryan: Do you remember approximately?

Mr. Fraad: I believe sometime last year.

Mr. Glauberman: Pardon me; you are right. I beg your pardon. It is 347 Fifth Avenue, New York City. The list shows you have 200 shares.

Mr. Fraad: I hold 500 shares by proxy.

Mr. Glauberman: The reason we couldn't find your name is because they misspelled your name; it is spelled "Fried". Later we corrected it as "Fraad," but we didn't have the books available.

Mr. London: In connection with that, the law provides that a man must be a shareholder. I hold 1,303 shares, and they have me down for three. I know that I hold three on the books of the company, but I have 300 more in my pocket.

Mr. Glauberman: You can announce it to the table if you want to.

Chairman Ryan: We will proceed with the vote on the motion as to whether or not Mr. Bachrach's motion should be acted on immediately.

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Mr. Miller: Much has been said about quality. There is a question as to whether you are going to vote at this time on the question as to limiting the directorate to nine members.

Mr. : You can make an amendment to fifteen afterwards.

Mr. : If they want to hold on to the nine, let them hold on to that first.

Chairman Ryan: The motion is before the meeting to take action on the first motion of Mr. Bachrach.

Mr. London: You can take a vote on the motion to amend the motion.

Mr. Nierenstein: Not if it is contradictory to the motion.

Mr. : The amendment should be taken up first.

Mr. London: May I ask who are voting the proxies for the shareholders' committees?

Mr. Glauberman: We will come to it in a moment.

Mr. : That was asked before and not answered.

Mr. Berman: I believe the amendment should be taken up first, the amendment that the Board of Directors shall consist of fifteen.

Chairman Ryan: We have a motion that it be nine, and if that is voted upon, we can take up the one for fifteen.

Mr. London: We should take a vote on the amendment first.

Chairman Ryan: These are the cards which were signed at the door.

Mr. Glauberman: Somebody wanted to know who the members of the proxies are. Mr. Levin

just reminded us that we did have to give him that information.

The proxies are four names. I have been informed that Mr. Louden resigned; three are remaining now.

Mr. Levin: Read the names of the gentlemen, please, and let them stand up, so the people here can see them.

Mr. Nierenstein: Mr. Ryan, Mr. Winston and Mr. Humbert.

Mr. Levin: I am told that Mr. Humbert resigned.

Mr. Nierenstein: I was in conversation with Mr. Humbert today, as was Mr. Ryan. No intimation of a resignation was presented. Mr. Humbert said that he had a very important financial— a very important engagement, which apparently had something to do with Mrs. Humbert, and he had to see her first, and if he could get here possibly, he would be here. He explained that to me when I spoke to him over the telephone today. Such information I have, such information I am glad to give you.

Mr. Bachrach: I would like to know if that gentleman (Mr. Levin) is a stockholder. Are you a stockholder?

Chairman Ryan: I think Mr. Bachrach is right in asking that question.

Mr. Levin: I represent Mr. Bellet, and here he is sitting alongside of me.

Mr. Bachrach: Is he a stockholder?

Mr. Levin: He stands here with 300 shares.

Chairman Ryan: Mr. Bellet is a stockholder.

Mr. Bachrach: I would like to know whether stockholders can talk just to disturb the meeting.

Mr. Levin: Point of order. I don't propose to be rebuked by this man or anybody like him.

Mr. Bachrach: I want to know whether this man is a stockholder.

Mr. London: Are you an attorney?

Mr. Levin: Yes.

Mr. Bellet: He also represents 20,000 shares by proxy, that will not be voted either here tonight.

Chairman Ryan: Has he got them with him?

Mr. Bellet: I want to see your proxy.

Mr. Bachrach: We don't want any loose talk here by people who are not interested. They are just outsiders, that is all, and come here to destroy what people want to build up. If he has no shares, he has no right here.

Mr. Nierenstein: We expect to proceed and vote in an orderly fashion. The inspectors of election are here, Mr. Cohn and Mr. Felds. For convenience, I expect to read the names of those gentlemen and ladies who signed cards presented by me at the door.

Mr. Bachrach: That is not Joseph Bellet.

Chairman Ryan: Are you Joseph Bellet?

Mr. Joseph Bellet: Yes, I can identify myself, 208¼ shares.

Chairman Ryan: I am going to read a list presented to me at the door by everybody that walked in, except a certain few people that I slipped up on, and when I call them, they can give their names, and as they vote, they vote either in favor of the motion or against it, reciting the number of shares that they own and their name, and the inspectors will take it down.

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J. Bachrach, Passaic, New Jersey, 1,200. How do you vote?

Mr. J. Bachrach: Nine directors; for the motion.

Chairman Ryan: I. Burman, New York City.

Mr. I. Burman: Against the motion; fifteen shares.

Mr. : Are we voting on the original motion or are we voting on the motion to close the remarks?

Chairman Ryan: We are voting on a motion to close the remarks.

Mr. : Then I object to the way this man asked Mr. Bachrach his vote.

Mr. Bachrach: The gentleman says, if you are voting on the motion to close the discussion. You did not ask me the right question. You asked me whether I vote for nine directors.

Chairman Ryan: Are you voting in favor of the motion to close the discussion?

Mr. Bachrach: Yes.

Chairman Ryan: How many shares?

Mr. Bachrach: Fifteen. Fifteen shares vote "No".

Chairman Ryan: I. Burman. He just voted. Samuel Berman, 30 Church Street.

Mr. Samuel Berman: Against. Sixty in my own right and about a thousand proxies.

Mr. Nierenstein: Malcolm K. Beyer, 24 Commerce Street.

Mr. : He stepped out for a moment.

Mr. Nierenstein: H. E. Disselhurst, Upper Montclair.

Mr. Disselhurst; In favor of the motion; 1,000 shares.

Mr. Nierenstein: A. D. Dondero.

Mr. Dondero: One hundred shares against.

Mr. Nierenstein: Daniel Fraad.

Mr. Daniel Fraad: Two hundred against.

Mr. Nierenstein: I. M. Grossman.

Mr. I. M. Grossman: Two hundred for; held by proxy, which I show here, three hundred and seventy-five; five hundred and seventy-five for.

Mr. Nierenstein: I. Houshhold, Hoboken.

Mr. I. Houshhold: Against, three hundred.

Mr. Nierenstein: H. Kleinhaus.

Mr. H. Kleinhaus: Two hundred and eighty-five against, in my own name; balance by proxy, two hundred and twenty-five.

Mr. London: This is only on the motion to close discussion.

Mr. Nierenstein: Mrs. Lillian Kavovitz.

Mrs. Kavovitz: Two hundred shares in my name and five hundred and twenty by proxy; seven hundred and twenty against.

Mr. Nierenstein: Floyd Kramer.

Mr. Kramer: Two hundred shares, I vote to close the discussion.

Mr. Nierenstein: Raymond Kramer.

Mr. Raymond Kramer: Five hundred in favor.

Mr. Nierenstein: Herman Levy.

Mr. Herman Levy: Fifty shares for.

Mr. Nierenstein: Maurice H. Levy.

Mr. Maurice H. Levy: Five hundred in my name; fourteen hundred and twenty-five by proxy, for the motion.

Mr. Nierenstein: Henry Louden.

Chairman Ryan: He stepped out.

Mr. Nierenstein: Leon London.

Mr. Leon London: Eight hundred and three votes for the motion.

Mr. Nierenstein: In your own name?

Mr. London: I filed my proxies.

Mr. Nierenstein: Howard L. McPherson.

Mr. McPherson: In favor, five.

Mr. Nierenstein: George F. Miller.

Mr. George F. Miller: I am not certain as to the motion. It is to close the discussion? I vote in favor about one hundred shares.

Mr. Nierenstein: Melvin F. Nagle.

Mr. Melvin F. Nagle: Fifty for.

Mr. Nierenstein: Charles L. Ori.

Mr. Charles L. Ori: In favor eighteen.

Mr. Nierenstein: Abraham Quint.

Mr. Abraham Quint: I vote three hundred and twenty-five in my own name and proxies up to twelve hundred and fifty. I vote to close discussion.

Mr. Nierenstein: Harry L. Reel.

Mr. Harry L. Reel: Over five hundred to close the discussion.

Mr. Nierenstein: Patrick Rooney.

Mr. Patrick Rooney. Close the discussion, thirty shares.

Mr. Nierenstein: Rebecca Rosenfeld.

Mrs. Rebecca Rosenfeld: Fifty not voted.

Mr. Nierenstein: Simon Rosenfeld, 902 Broadway.

Mr. Simon Rosenfeld: Nine hundred and sixty by proxy on file, and thirty personal, in favor of closing discussion.

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Mr. Nierenstein: Charles J. Ryan.

Mr. Charles J. Ryan: In favor, twenty-five shares.

Mr. Nierenstein: R. L. Strickland.

Mr. R. L. Strickland: One thousand in favor.

Mr. Nierenstein: Evan Van Brundt.

Evan Van Brundt: One hundred and twenty shares against.

Mr. Nierenstein: You also had a proxy for Mr. Katz.

Mr. Van Brundt: One hundred for.

Mr. Nierenstein: Gordon M. Williamson.

Mr. Gordon M. Williamson: Four hundred and fifty shares for.

Mr. Nierenstein: Helen M. Zuckerman.

Mr. Fraad: I hold her proxy for five hundred. I vote them against.

Mr. Nierenstein: Saul Schwartz.

Mr. Saul Schwartz: Thirty shares in favor.

Mr. Nierenstein: Hyman Halpern. (No response.)

Theodore Rosner. (No response.)

Julius Burkhimer. (Not voting.)

Samuel Capel.

Mr. Samuel Capel: In favor, five hundred shares.

Mr. Nierenstein: Edward A. Markley.

Mr. Edward A. Markley: For the motion, one hundred and seventy-two thousand.

Mr. Nierenstein: Samuel Hirschenstein.

Mr. Samuel Hirschenstein: Thirty-four hundred and fifty by proxy.

Chairman Ryan: Any one else who wishes to vote?

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Mr. Samuel Berman: I challenge Mr. Markley's vote; I wish it to go on record.

Mr. : Second the motion.

Mr. Samuel Kipnis: You have a proxy there, but I am the one that is representing the people myself. I am the proxy man.

Chairman Ryan: Do you wish to withdraw your proxy?

Mr. Kipnis: I represent thirty-five hundred shares.

Mr. Nierenstein: Hyman Kraemer.

Mr. Hyman Kraemer: In favor, two thousand shares.

Mr. Nierenstein: Frank S. Winston.

Mr. Frank S. Winston: One hundred in my own name, forty-six hundred by proxy, for the proxies which are on file.

Chairman Ryan: Are there any other gentlemen who are now recording names on the ballot?

Mr. Kipnis: I want to record my vote, representing Mrs. Bessie Kipnis, one thousand shares for.

Mr. Nierenstein: Any one else?

Mr. Douglas H. Lane: Three hundred shares for.

Mr. Kipnis: I vote thirty-five hundred shares by proxy.

Mr. Nierenstein: Is there anybody else who hasn't voted?

Mr. Freedman: I would like to see some of these proxies, two or three.

(Proxies produced and handed to Mr. Freedman.)

Chairman Ryan: Has everybody voted who desires to vote?

(No response.)

The vote is closed.

Mr. Saul Hecht: Ten hundred and twenty shares in favor.

Mr. Grossman: On a point of order. If a stockholder isn't satisfied with the vote of Mr. Kipnis, let him hand his challenge in.

Mr. Freedman: I challenge the thousand share vote.

Mr. Grossman: It is up to the inspectors to decide.

Mr. Freedman: I challenge every vote of five hundred and upwards.

Chairman Ryan: That is all right; you challenge all votes above five hundred shares.

Mr. Reel: A question on the motion, or whatever it is. I happen to be one of the voters that votes above five hundred. What right have you to challenge my vote? I am present here.

Mr. Freedman: I am not directing the particular remarks to you. I asked to see certain papers; they wouldn't show them to me.

Mr. Reel: I voted over five hundred.

Mr. Freedman: In general principles.

Mr. Bachrach: On general principles?

Mr. Freedman: Yes, on general principles. This meeting will not be railroaded.

Mr. Rosenfeld: Mr. Chairman, please act as chairman.

Mr. Glauberman: Mr. Chairman and Ladies and Gentlemen:—

Mr. London: In order that the meeting may be conducted in an orderly fashion, I would suggest that you appoint three sergeant-at-arms who

may obey any command that you would like to give them.

Mr. Quint: I second the motion.

Mr. : My suggestion is that you ought to appoint a committee of one, two or three men to take this gentleman outside with all these proxies and let him scrutinize them to his heart's content. Appoint a custodian and let him scrutinize those records. If you don't let him scrutinize those records, he will go outside and say that this thing was all fixed. Why should you be yourself under suspicion, or why should this meeting be disrupted? This man should not have an onus and say "They refused me that thing," and then flare up and make a great big noise about this thing. Appoint a committee of one or two men and take the records outside and let him scrutinize them to his heart's content. If there is anything wrong about them, let him tell us about it, so we can go on and do our business.

Mr. Glauberman: I am sure that Mr. Freedman did not mean that he wants to scrutinize every one here, because it took four people all day today to check up every proxy with the record. The two inspectors that have to file a certificate under oath—one of them is a member of the bar, who is going to swear that he examined every proxy and he found them, and as I found them, according to the books of the company. If that man swears falsely, you know what will happen to him. If you think he will swear falsely—if you think that man is the type of man, or the two men,—one is going to be a member of the bar, the other is a member of the bar—say so, and the chairman may appoint other people who will act. Furthermore, all the proxies

are going to be impounded in my care, because I promised the solicitor for the receivers that I do not want anything to be questioned in any way; so I will seal all of those, take them to my office, and when the proper time comes, I will bring them to court with me, so Mr. Freedman, or anyone else, will have a perfect opportunity to examine them; and let me so inform Mr. Freedman. You realize the time is running, we have a lot of work to do, you have a perfect right to enter your challenge on any suspicion that you may have, and a perfect right to say what you like, but please remember, to go through anything that you want will take us hours and hours to do. Some of the men worked from thirty to forty minutes to find a proxy to be able to check up; the spelling is different, the name is different, the address is changed. There is a great deal of work. They have done it to the best of their ability. We have a list of those that are questioned by them; so do not worry, everything will be reported properly, at least on my part. I, who have the responsibility of this meeting, have no reason, one way or the other, to fool you, or fool the Court, or fool anybody here. I realize that I have a job to perform, and a job, as I said last time at the meeting at which you were not present, I said, "My job is to report to the Vice Chancellor what you gentlemen want. That is all I have to do." Please help me. I worked very hard. I may tell you that on account of this matter, I went to bed three o'clock in the morning, and I was at Trenton on account of this matter at nine o'clock in the morning.

Mr. : Proceed with the meeting.

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Chairman Ryan: We will proceed with the meeting.

Have the inspectors got the tally.

Mr. Kleinhaus: May I ask how the one hundred and forty-two thousand proxies will be recorded?

Mr. Glauberman: The question now is how the proxies are voting on the motion to close the discussion. The question is for them to decide; they have the right to vote or not to vote. The two gentlemen, the proxies, can go outside and decide one way or the other. They have a right not to vote.

Mr. Grill: I object to the vote.

Chairman Ryan: We won't vote it.

Mr. Bachrach: If you please, I feel that it is perfectly right that on this motion that we are now voting on, that the proxies shall not vote, because there would be a lot of commotion. I personally have sent in my proxy for twelve hundred shares; that would mean that I voted twice. I certainly do not want to vote twice, and I want to call the attention of the Chairman and everybody here, on the next question, which may be more important, that when the vote is taken, those that sent proxies in shall not vote again, because they will be voting twice.

Chairman Ryan: If it pleases Mr. Winston, the committee won't vote on this, and reserve all future rights for future voting.

Mr. Levin: You cannot reserve voting rights.

Mr. London: Mr. Bachrach stated that those whose proxies have been sent in should not vote, and he stated earlier in the meeting that they could withdraw the proxy.

Mr. Bachrach: Yes.

Mr. London: They will be given an opportunity to withdraw.

Mr. Glauberman: We have quite a few here.

Mr. Bachrach: I don't withdraw mine. I don't want to vote twice.

While we are waiting for the proxies to be tallied, I wish to move a vote of thanks to the attorneys that brought about this meeting and to the gentlemen that put all this hard work in for the last few weeks. I make this in the form of a motion.

(Motion seconded.)

Chairman Ryan: All in favor, rise.

Contrary, "No."

(Four persons voted in favor, by rising. No other vote asked for by the Chairman.)

If you please, Ladies and Gentlemen: in order to save time, while the tellers are finishing their work, Mr. Louden would like to say a few words.

Mr. Louden: Mr. Chairman, Ladies and Gentlemen: I was pretty hot under the collar the other night, when I spoke to you on my reasons for resigning, and I wish, if possible, at the present time to soften a little bit, and perhaps remove some apprehension or misunderstanding in your minds.

I did not wish to convey in any way any reflection upon the honesty of the previous directors of the organization. I only wished to accuse them of blundering. That was the conception that I wished to convey to you, that they had grossly blundered in the management of the concern. I think that left an impression on some of your minds of something more severe. Goodness knows, these gentlemen who have been the directors in the past, some of them are in a

very severe position today, and I would be the last to kick a man when he is being grossly mishandled, as it were, at the present time, and I don't wish to appear as setting them to any punishment. That is all I wish to impress, that I do not accuse them of dishonesty, or any other thing like that, only about the management.

(Applause.)

Chairman Ryan: I have the tally here, Ladies and Gentlemen, on the question as to whether or not the discussion shall be closed. The ayes have it. Disregarding the vote which was challenged of 172,000 shares, we still have 25,184 votes in favor of discontinuing the discussion, against 2,300 in favor of continuing.

Mr. : So that we don't consume another three-quarters of an hour on an argument that will only show whether there is a majority of 25,183 or 25,182, may I ask you to call for the next vote, and record those challenges of votes that are registered, and record all the opposition?

Mr. London: Point of order. The next motion is the motion as to nine or fifteen.

Chairman Ryan: Nine.

Mr. London: Nine.

That motion must be decided on the number of shares which are present.

Mr. Grossman: I move the question.

Chairman Ryan: The motion has been made and seconded that the number of directors to be elected this evening shall be nine. We will now proceed to take a vote on that motion.

Mr. : Do the proxies count?

Chairman Ryan: The same as before.

Mr. Bachrach: Those that did not withdraw the proxies should not vote. Those persons who have turned their proxies in to the committee, need not vote unless they care to withdraw their proxies.

Chairman Ryan: You may now proceed to vote.

Mr. J. Bachrach: I cannot vote; my proxy is in.

I. Berman: Fifteen against.

Samuel Berman: Sixty against.

Mr. H. E. Disselhurst: One thousand in favor.

Mr. A. Dondero: One hundred against.

Mr. Daniel Fraad: Seven hundred against.

Mr. I. M. Grossman: Two hundred; I have proxies for three hundred and seventy five; five hundred and seventy-five for the motion.

Mr. H. Kleinhaus: Two hundred and eighty-five against.

Mrs. Lillian Kavovitz: Seven hundred and twenty against.

Mr. Floyd Kraemer: Two hundred in favor.

Mr. Raymond Kraemer: Five hundred in favor.

Mr. Herman Levy: Fifty against.

Mr. Maurice Levy: My proxy was just taken from me. There are nineteen hundred and twenty-five shares against.

Mr. Leon London: Eight hundred and three shares against.

Mr. H. L. McPherson: Five in favor.

Mr. George F. Miller: One hundred against.

Mr. M. F. Nagle: Fifty for.

Mr. Charles L. Ori: In favor, eighteen.

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Mr. Abraham Quint: My proxies are there—twelve hundred and fifty for nine directors.

Mr. Charles L. Reel: Five hundred and twenty-four in favor.

Mr. Patrick Rooney: Thirty in favor.

Mr. Irving Rosenfeld: Fifty not voting.

Mr. Simon Rosenfeld: Thirty, and nine hundred and sixty proxies, in favor.

Mr. R. L. Strickland: Not voting; my proxy is in.

Mr. E. Van Brundt: One hundred and twenty against.

Mr. Gordon M. Williamson: Four hundred and fifty for.

Helen M. Zuckerman:—

Mr. Fraad: The proxy is there—against.

Mr. Saul Schwartz: Thirty in favor.

Mr. Julius Burkhimer: Not voting.

Mr. Samuel Capel: (Stepped out)

Mr. Samuel Hirschenstein: Three thousand four hundred and fifty in favor.

Mr. Theodore Rosener: (Jersey City) (No answer)

Mr. Kleinhaus: That proxy was included in my two hundred and fifty-five.

Mr. Hyman Halpern: (Stepped out)

Mr. Samuel Kipnis: I am the proxy for Harry Ginsberg on record seventeen hundred shares; Bessie Kipnis, one thousand shares; William Abram Herman, one hundred, and seven hundred, in favor; total of thirty-five hundred shares in favor.

Mr. Saul Hecht: In favor, ten hundred and twenty shares.

Mr. Douglas H. Lane: Not voting; my proxy is in.

Mr. Malcolm K. Beyer: (No answer)

Mr. Henry Louden: In favor, four hundred.

Mr. Frank S. Winston: One hundred of my own; four thousand six hundred by proxy, in favor.

Chairman Ryan: Is there anybody here who hasn't voted, or I haven't called their names?

Mr. Levin: How are the proxy voters voting?

Chairman Ryan: The proxy voters have not been out yet.

Mr. Nierenstein: While the tellers are counting the ballots, just one remark, directed to a former member of this committee, who resigned. I am referring to Mr. Louden of the Stockholders Protective Committee, and I want to say to you here publicly, that as attorney for that committee, we appreciated his efforts and his work and his earnestness, and can fully understand the reason that prompted him to take the course that he did. When he worked with the committee, he was heart and soul with them. He spent his time, hours of his time, for the affairs of the New Jersey Bankers and for the benefit of all the stockholders. To all intents and purposes, he served in every respect as a member of that committee fully and faithfully, and in the name of the committee I want to thank him, and I want my remarks for that purpose to go into the record.

Mr. Rosenfeld: It is quite apparent, is it not, that the motion will be passed—just a question of tallies?

Chairman Ryan: Yes.

Exhibit C. 2 of May 29, 1930.

Is there any objection to proceeding before the tally is recorded?

(No objection.)

Then it seems to be in order to have discussion on the names of the directors, who, I presume, will be nine.

Mr. Rosenfeld: Mr. Chairman, I will confess I have been anxious for this long-waited time to discuss what I believe is the crux of this meeting and the first bit of real constructive work and intelligent discussion for the meeting.

Appreciating the fact that every one is entitled to a voice, I will shorten my remarks as much as possible, and please don't misunderstand me to be pert.

You will observe that I did not vote my shares of stock. Please understand that that was an intent and purpose. It is my humble opinion that whether you vote fifteen directors, or nine, or sixty-two, or one, that will not account for the success or failure of this organization. It is my frank opinion that regardless of what the majority on that list is, there is a human equation that is going to rest in the mind of Judge Backes, or any other fair mind, and it is this: If you ladies and gentlemen as a family cannot go up to him and say, "This was our past difficulty; yes, we are in accord; that will count for our future prosperity." I tell you that unless Judge Backes has a mind other than the average—not average, but you are practically he has a judicial mind—he is going to say to himself, "I am not the one to take upon my shoulders the responsibility of this company, eventually, maybe, paying out ten cents on the dollar. They have a right to get the one dollar and a half cash today;

let them take that; otherwise, there will be ever so many disgruntled people, who will point a finger at me from time to time."

Bearing that in mind, Mr. Chairman, and entirely pointed and material to this consideration of directors, when I came to the meeting on Tuesday night, I came, not because I owned fifty shares of stock—true, enough, it cost me six hundred and seventy-five dollars in cash, and I don't like cigars, but six hundred and seventy-five dollars—I came at the instance and request of Mr. Joseph Socolof, a very substantial client of our office, who owns three hundred shares of stock,—or two hundred shares of stock, he tells me—in his own name, and is responsible for over one thousand shares distributed among his immediate friends and relatives.

As an instance of my good faith, I came to this meeting entirely unarmed; I have no proxy from Mr. Socolof, nor from any of the people that he represents, and I tell you very frankly, that by virtue of his interests and their interests, I could very easily come here with no less than five thousand proxies, but I tell you in my honest opinion, that the reason I don't is because I would waste my time in assembling these proxies and accomplish nothing. I knew no one here, excepting Mr. Quint, whom I met ten years ago and did not see in the interim; Mr. Fraad, whom I met ten years previous, and did not see in the interim. I went home with Mr. Capel, whom I never met in my life before Tuesday night, and on the way home Mr. Capel said to me, "There seems to be two factions of stockholders in this organization; one seems to be anti-Weinberger; one seems to be pro-Weinberger." Understand me very clearly, I did not know Mr. Weinberger.

Exhibit C. 2 of May 29, 1930.

I have never met Mr. Weinberger. I have heard a lot of things pro and con. I hope for Mr. Weinberger's sake, as every white man would, that if the accusations are false against him, that God grant him justice. I hope if he did wrong, that such measures are open to prevent that wrong from being done and suffering being endured by others.

Mr. Kappel said to me, or Mr. Socolof said to me while I was out, that he thought a man by the name of Mr. Bellet, who is present in this room at this time, proposed a board of directors consisting of five or six very high class, intelligent, successful men—

Mr. Bellet: May I rise to a point of order? Please don't bring those names into this matter.

Mr. Rosenfeld: I want to indicate the good faith and sincerity of my remarks, and I will be finished very shortly. The next morning I received a 'phone call from Mr. Kappel, who asked me to lunch with himself and his two partners, Mr. London and Mr. Marks. Mr. Kappel please correct me if I mis-state one word. Mr. Kappel said to me, "Mr. Rosenfeld, I own 500 shares of stock in this corporation. My partner he owns 500 shares, my partner in life owns 500 shares; we paid approximately I think $22,000 in cash for that stock." I said, "What can I do for you, Mr. Kappel?" He said, "Mr. Rosenfeld, I am not interested in anti-Weinberger, pro-Weinberger, anti, pro, or anything else. I am interested in all joining hands, so that as much of my $22,000 as can be realized, shall be realized, and my interest protected." I was then accosted by Mr. Socolof and a number of other people, with the same plea; so entirely

on my own initiative I called up Mr. Bellet at Newark; I said, "Mr. Bellet, I understand you propose a list of men. I have five or six names in front of me. I recognize one or two of these names as having been nominated by the very meeting which I attended last night, and I had always been mindful of the fact—and, mind you, I don't state any information of my own —that the meeting was supposed to be a pro-Weinberger meeting." I said, "There cannot be much difference between us; there ought not to be the necessity, there ought not to be the necessity of one gang yelling one way and another crowd yelling the other way." I said, "Mr. Bellet, are you or the group that you propose, anxious to gain control of this organization?" He said, "No, Mr. Rosenfeld, I am not." I said, "As an indication of your good faith, can you induce the most prominent of those on that list to offer their aid and help to this organization, not consider it pro-Weinberger, anti-Weinberger, pro or con or anybody else, or will they join hands?" He said, "Yes, we will." Mr. Bellet called me up no less than six or seven times from Newark yesterday morning and this morning. He asked me, "What further do you propose to do?" I said, "Mr. Bellet, you cannot go before a meeting and tell the people at the meeting;—'I by virtue of some divine power vested in me know how to get big directors, and these are the men that ought to run it, take it or leave it.'" I said, "You have got to consider some people who were formerly or presently connected with Mr. Weinberger, or feel kindly to him," I said "and not to mince words and get down to facts." The first name pro-

posed at last night's meeting was Mr. Hyman Kraemer. The last I know of him was about ten years ago. I said, "Mr. Kraemer, as I introduced myself to him last night, said to me, 'Mr. Rosenfeld, Mr. Weinberger has been my lawyer for a number of years.'" I said, "Mr. Bellet, if a man like Mr. Kraemer goes on that board, what do you think?" Mr. Bellet said, "I think this: that Mr. Hyman Kraemer is of sufficient character and reputation that despite whatever warmth he may have for Mr. Weinberger, if a right and honest thing is to be done, and done against Weinberger's interests, I think he will do the right thing, and if it is not, he will resign from the board." I came to the next name, Mr. Friedman. I said, "How do you feel about that gentleman?" and he repeated the same thing. I then said, "Will you consent, or your people consent, to the induction into that board of several people who are absolutely not intimate, and you never heard of, and suggested from the floor, or anybody else," and he said, "Yes, positively so." I spoke to Mr. Kraemer this evening; he assures me as an acquaintance of Mr. Weinberger, that Mr. Weinberger does not want control of the company. He has gotten his family into the company, he has put his own money into the company, and he is willing to be on the back side and sit alone and encourage and do what he can to pull it through; but he is interested in our success." I said, "Mr. Kraemer, what is your motive in this matter?" Mr. Kraemer said, "I am not going on that board even if it is the will of the majority that I go on the board, because I am a philanthropist." I said, "Mr.

Kraemer, I will ask you as an act of sincerity, to permit me to use the words you said to me." Mr. Kraemer said, "I put in my own money to a very substantial amount; my son graduated from college, and he bought 500 shares, and I had to endorse his note to get the money to pay for the shares, and he is paying for that today from his weekly earnings. I have gotten my relatives, some of whom are widows and cannot well afford to lose their money." He said, "I want to do what I can." I said, "Mr. Kraemer, here are a few of the names suggested from the other side by Mr. Bellet. No. 1, what do you think of him?" Mr. Kraemer said, "I served on one of the boards of one of the banks with him, and I think they don't come any finer." I said, "No. 2, there is this man. This man happens to be a retired honorary partner of the largest mining firm in the world." Mr. Kraemer said, "How much stock does he own?" and this man said "Not one share." Mr. Kraemer said in very intelligent fashion, "Explain to me, then, what interest he has in going into this company, because a man on the board of that type has nothing to gain and nothing to lose; is he a philanthropist, and what good will he do us?" and Mr. Kraemer was then explaining in very logical fashion that this man that was chosen to go into the board because he would want to work out a fine clean proposition, whereby if the company subsequently righted itself, and came to a certain point of success and fine condition, that he would buy a certain number of shares of stock, highly in excess of what we are offered in liquidation value today. In other words, he would want a share in the

profit, if there is profit in the end, and, gentlemen, if we can get that spirit into the situation, I don't care if you have nine, fifteen or fourteen. Probably the largest financial institutions in the world are run by two or three geniuses. Why not depart from this rule, all this voting of this determination of nine or fifteen, all this voting, and end discussion. I tell you that of these fifteen names—I tell you honestly and as sincerely as I can speak, that I would not want to see the New Jersey Bankers Securities Corporation continued if it has got to pick nine from these fifteen, and observe, please, that Irving Rosenfeld is one of the names on it. We should pick the best men available from this list, and so to that end, to be constructive, I propose this: Let those who have studied the negotiations, submit to this board, to this room, to this group, a list of nine or ten really big responsible names, names of men who cannot be bought for money, names of men of whom it cannot be said they want to swing the thing for Weinberger, they want to swing the thing against Weinberger. I tell you, we are proceeding wrongly. I would suggest to that end that a platform be entered at this time, a platform of names, that we explain to these people in what way each and every name will help, in what way each and every name will benefit the organization, then these people can decide intelligently. Let us realize this, Mr. Chairman, and I am through. There are, I understand, a hundred and forty-two thousand votes by proxy; there are, I understand, a hundred and seventy-two thousand votes in the hands of one individual, whether they be challenged properly or im-

properly is not the consideration at this time. I am satisfied that there is sufficient control in one group; whether it is my group, your group, or Tom Jones' group, makes no difference, irrespective of what the voice of the meeting may be, to vote that particular proposition which is in the minds at the present time of that particular group that controls the situation. I make no accusation. I don't say that if I was in that position I wouldn't do the same thing; but you are not reorganizing the New Jersey Bankers Securities Company on that basis, and if it is agreeable to Mr. Bellet, and if it is the will of the meeting, I would like to suggest these names—only a suggestion, mind you, only a suggestion. I wouldn't do it, Mr. Bellet, without your consent—only a suggestion, so you can see what I have in mind, and to make my proposition very clear, let me say this, and please harken to these words: I have received nothing from the Stockholders' Protective Committee; I expect nothing; I will accept nothing; I will not accept any directorship or counselship; but for the sake of those who have invested seven or seven and a half million dollars, and stand ready to get a million dollars or less in return therefore, I ask that we proceed intelligently to the end of doing what is right, and I make this as a concluding remark, that if those nine nominated or suggested to the meeting, somebody on the floor feels that he knows of someone who is better than one of those nine, let him substitute him. I only suggest the nine as a starting point.

Chairman Ryan: I might say regarding the vote that we have been waiting for, on the

nine directors, in favor of nine directors, 20,192, and against, 4,913.

Mr. Kipnis: May I ask for the record how many in the gathering here tonight voted "Yes" and how many "No"?

Chairman Ryan: 19 "Yes" and 11 "No."

Mr. London: There were nominations regularly made and seconded at the previous meeting of the stockholders, and to enter into conjecture as to whether or not a given group of men would accept a position on the board of this company, it was unpleasant notoriety which it has received, I move that we proceed to the balloting for directors.

Mr. Bachrach: I second the motion.

Mr. Kipnis: I had the floor before. I am not going to make as nice a speech as my friend on the other side; I wish I could. As a business man, a very large business man that deals, not in stocks, and not in bankers and brokers, unfortunately I was connected with bankers and brokers, and it broke me; it is simply to watch and see at the last meeting and at this meeting, and all the meetings I have attended so far as the New Jersey Bankers Securities Company, that a man owing three or five or fifty shares will get up and always try to protect millions of shares, and the people that own thousands of shares, and the poor slob like myself that puts sixty odd thousand dollars into this company, I have no interest to try to protect the man that has fifty shares. I have got to go to find somebody on Wall Street who is rated millions to try to be my banker and break me again. We have had enough of that. Fortunately, we can still pay

our bills, by mere fortune. I fully believe in the ability of a man like Mr. Kappel to conduct or help find the men that will help this Board of Directors that will be elected tonight, to conduct the tremendous large business of the New Jersey Bankers Corporation and bring it back where it ought to be, without the assistance of a board of directors that are rated in Dun and Bradstreet's in millions. I have the same idea. I think that Mr. Kraemer and the other more every-day good honest-to-God business men, who have their own savings —plenty of it—invested in this company, and on account of their large investment in this company, will without a doubt protect the three and the five and the fifty-shareholders in this company; and it is my suggestion—I know very well of Mr. Bellet's list; I have studied it very carefully, and as you are going on tonight, you may call another meeting and another meeting, and before we end, it will be March and we will have spring, and we will write poems about these meetings. I therefore say, having a lot of my money invested, and while being on the floor I want to tell you, ladies and gentlemen, if you want to figure out 3,500 shares at $16.50, it amounts to around $61,000, which I have paid out of my check book, and I am ready to show cancelled checks for it, some direct to the New Jersey Bankers and some to brokers, sixty-one thousand and some odd dollars in cash out of my money, and being a great philanthropist I gave half to my partner, Harry Ginsberg, who is here tonight, and you can challenge his vote, he is on the record with 1,700 shares, and I gave a portion to my wife, and unfortunately put up 700 shares as se-

curity with my broker, and now he is holding it; so you see, gentlemen, I am not trying to push myself on the board of directors, because I haven't any interest in the company at all. I made a statement to a gentleman the other day that I loved my wife and my wife still loves me, and her interest in this stock is my interest and my partner's interest, and he is still my partner and I hope he will be my partner for a long time to come, because we have made a wonderful success in our line of business. I am trying to protect his interest and mine, and I hope that if I will be elected, not fortunately elected to the board of directorship, I will try to preserve the interests of the three shares and of the fifty shares just as much as I will preserve the interest of my 3,400 shares, and I consider them my 3,400 shares and nobody else's.

Mr. Bellet: May I rise to a point of order? I represent the men who are under discussion, and I don't want the names discussed. We are not interested in any proposition. I don't wish to bring up the names of the men, because of the type and calibre of the men to be discussed, as the gentleman on the floor now wishes to discuss them at this meeting; and I hope he won't discuss them any further, because I think it is useless. We haven't the same thing in common just at the present time, and for my purposes I want to say that as far as Mr. Kappel's intention is concerned, as far as these men are concerned, I would be just as happy to see him on the board of directors as these other men, and he is certainly welcome as far as I am concerned to a partnership on the board of the New Jersey Bankers, without considering these men.

Mr. Bachrach: A motion is on the floor.

Mr. Miller: It seems to me that the gentlemen here are speaking so eloquently, but speaking of no definite point. I think we need a motion to the effect that we go into the election.

Chairman Ryan: We have that motion and take action on it. We have decided on nine, and there is a motion on the floor that we proceed with the voting.

Mr. Miller: I sincerely trust that the people who are here, know the personnel of the board much better than I do, would consider not only capacity but consider quality and by that I mean probity, and endeavor to find men who are not only capable from an intellectual point of view, or a knowledge of business, but men who are interested enough in their fellows today to do that thing which is right. We want honesty as well as capability. Capability can twist itself in various kinds of ways to accomplish ulterior purposes; but we want men and women too, because I want to put in nomination a woman like a woman who is named here, because I think that women ought to be represented; but we ask you, ladies and gentlemen, to look at men who are interested in this organization, and with an effort to promote its interests, not from a selfish point of view—while every man must look out for his own interests, I am here on account of my little interest, and everybody else is here on account of his or her little interest; but preserving his own interest to see that he preserves the interest of everybody else. That is what we need in this organization, as to things which have gone wrong in the past. Mismanagement, unwisdom, or perhaps misdirection. Of those things I don't know; but we should think of the best interests of this

organization and put forth men and women who are competent to guide its destiny, and will do for the best interests of the organization.

Mr. Rosenfeld: In entire good faith and entirely in a friendly spirit, as well as because of my own inclination, will you permit me to withdraw my name from the list. I do it in good faith. I am still with you; but under the circumstances I want to be sincere.

Chairman Ryan: Irving Rosenfeld, whose name is on the second page, wishes to withdraw. Now we will proceed with the balloting.

Mr. Kleinhaus: My name is the third from the bottom on the first page. It is not Samuel; it is Herman.

Mr. Glauberman: I will look your name up. I will change your name. I find several names, Herman and Rose Kleinhaus. Who is Rose Kleinhaus? Is that your wife?

Mr. Kleinhaus: Yes. The nomination is made in the name of Herman Kleinhaus.

Chairman Ryan: Will everybody change Mr. Kleinhaus' name to Herman Kleinhaus.

Mr. Glauberman: He has not recorded his stock. How many shares have you with you?

Mr. Kleinhaus: Sixty shares with me.

Mr. Miller: I am interested in this matter, should we permit these gentlemen to decline merely because they are modest enough to express themselves in that way? If we think that these gentlemen or any of them are fully competent and sincere, and want this company to come up again and function properly, I do not think we should consider their declination.

Chairman Ryan: I am afraid if a gentleman does not care to be elected, or does not care to run, we cannot very well force him.

Will you make a decision regarding the voting, as to whether those who are listed there can be voted for?

Mr. Glauberman: Any man who is on that list can be voted for. You can vote for Mr. Rosenfeld, though he withdraws. You can vote for him. He can refuse to vote. As to the question of qualification, it is something different. You elect a man, but he must qualify later after you have elected him. Then he must be a shareholder of the company. May I also suggest that you fill in on the top the word "Nine," vote for nine, because we did not know at that time how many you would vote for. If you have proxies, and you have given us the proxies, please do not vote unless you cancel your proxies. We cannot count your name twice, because it is quite a job to check up those things. If you vote "Yes" and you have no proxy here, and it is your own stock, sign your name, address, and the number of shares that you own. In the event that you vote for someone else, sign your name, put on "Proxy for stockholder" and attach your proxy to the ballot.

Mr. Kleinhaus: I have two points of information. First, do our by-laws permit cumulative voting?

Mr. Glauberman: No.

Mr. Kleinhaus: Is it in order to suggest the name of another gentleman when one resigns?

Mr. Glauberman: May I say that it is my humble opinion, that the nominations have been closed; but I do not believe that prevents any one

of you previously—if you put in the name if you want to right here, but I do not think it is proper to nominate him now, because the nominations have been closed; so if you want to vote, put down the man's name.

Mr. Kleinhaus: May I ask for an opinion from the Chair, whether it is correct at this time to suggest another name, in view of the fact that Mr. Rosenfeld resigns?

Chairman Ryan: I had the opinion of counsel on that. He says if anyone chooses to put a name in on the blank space, he may do so.

Mr. Kleinhaus: Nominations can be made from the floor?

Mr. Bachrach: No; it takes too much time.

Mr. Quint: I think it would be fair to tell the ladies and gentlemen present here this evening, that it seems to have been the consensus of opinion that the New Jersey Bankers should be continued. I think that is the consensus of all the people here.

Mr. Winston: That was decided.

Mr. Quint: I want to say, before you vote my name on the ballot for directors, that I will use my own judgment, if you choose to elect me on your board, and I find that it would be to the detriment of the company to continue, I will be against it.

Mr. Bachrach: That is right.

Mr. Quint: I want to conserve the moneys of the stockholders of this company.

Mr. Miller: Say that over again.

Mr. Quint: I said that I understood that it was the consensus of opinion among all of the stockholders that it was their intention to con-

tinue the business. I said before you vote for me as a director of this company I want you all to understand that if you elect me a director, and I don't crave it, I want to tell you that I don't crave it, I am here to try and get as much money out of my interest as I can, and also for the rest of the stockholders. I say that if you do elect me and I find that it won't be to the interest of the company and stockholders in general to continue this company as a going concern, I shall make up my mind as quickly as possible, so that if you vote for me, remember that if after we have several meetings of the board of directors and I am convinced that it will serve no purpose to continue this company, to continue its business functions, I am going to be in favor of winding it up, conserve all the money I possibly can for the company.

I want to say one more thing. I have heard a lot of whispers around the room, "Well, that is the old gag." I haven't been deaf to it, and perhaps it would be more diplomatic on my part not to pay any attention to it. I will say this, that I don't know Mr. Weinberger and never met him in my life, and I don't say this with any prejudice.

Mr. Glauberman: Ladies and gentlemen, I met Mr. Weinberger on December 16, 1929, and this is what I plan to do in my petition after this meeting. I plan every man who is going to be elected, who will be elected, to give the following statement: I expect the following thing, that every director will be able to furnish to the Vice-Chancellor, satisfy him, the following qualifications. First, bank reference, that he is a responsible man, some letters of recommendation of responsible people as to his ability and

integrity and so on, and also expect this: That every director who is elected shall furnish me, in order to be able to furnish the Court, a statement one way or the other, his connection with the directors of this company, in connection with Mr. Weinberger, or Mr. Somebody Else. In connection, I mean in the following way, financial connection, friendly or otherwise, as I find from a little experience that you cannot hush things up. It is ridiculous. It doesn't lend itself. We don't want it. We want to be able to inform the Court of every detail. Let me tell you this as a result of my examining the stockholders' list, I find that men who have invested most in this company are men who know Weinberger. I don't know—I didn't question every one of them on this list; but I am sure that most of them know Weinberger. I am sure every one will be honest and sincere and inform the Court, and I also feel that legally, there is no legal objection at this time to elect anybody, Mr. Weinberger or anyone else, who is a friend of Mr. Weinberger, but we want it understood by the gathering at this meeting that there is nothing going to be hidden from the Court. That it is the purpose of the meeting only to report to the Court. We have no guarantee that the directors will run this company.

The second point, of Mr. Quint, the question whether the members who are elected will be bound by the resolution passed last week by the stockholders. Members of the board of directors understand that if the directors think that they want to liquidate this company, if they will proceed properly, according to statute, they must give proper notice to stockholders and they can liquidate. You know very well that directors

themselves cannot liquidate a company unless by a certain number of votes of the stockholders. I am glad to hear that Mr. Quint, who is a candidate, feels that way, that he is going to use his own judgment; and I hope every man who will be elected, will feel that way, independently and fearlessly, and we expect the board to be elected will use its own independent judgment. That is the reason they are elected.

Chairman Ryan: Please conduct the voting, Mr. Glauberman.

Mr. Grossman: May I ask that the proxies go outside and record their ballot?

Chairman Ryan: We will go out. Mr. Glauberman, please conduct the meeting.

Mr. Louden: There are many New York people here today, who are not so intimately acquainted with the situation as Jersey people are. I don't want to stir up again the conflict that we had in the past; and while we have appeals for joining hands, and so forth, don't forget this. I think that Mr. Glauberman will endorse me in what I am about to say. You know perfectly well, Mr. Glauberman, the strong animosity that existed between the Vice Chancellor and the old officers of the New Jersey Bankers Securities Company, and I think that you are with me when I assert that if Vice Chancellor Backes, his Honor, goes through that list, and finds any evidence of association with Mr. Harry Weinberger, or any holdover, that he will simply throw out the whole board.

Mr. Glauberman: May I say this: I am officer of the Court. As a member of the Bar and as a lawyer, I do not like anyone here to anticipate what Vice Chancellor Backes is going

to do. I don't think it is justice to the Court. I am sure Vice-Chancellor Backes is going to use his own judgment. It is not fair to any member here or any canidate here to make those remarks, and it is not fair to the Court. I therefore wish that you state your own opinion about the candidates, and please do not anticipate any opinion of the Court. I didn't express any, and I know a little more about the procedure than you. I don't know much. I know about the Court. And please pay me that personal favor. I do not want any comments about courts at this meeting.

Mr. Louden: All right; I will withdraw the whole of my remarks, and I will put it this way: That I have read the Vice Chancellor's remarks on various occasion, when the affairs of this company were before him, and he has expressed these feelings that I have just announced a few moments ago, and in electing your board of directors, and the gentlemen who are going to be elected, I would just ask that you, if you have any previous close affiliation with the previous members of the board, that you should announce it to the meeting here, so that they would know how to vote, because I think if you go through on any affiliation—I will not disobey, as Mr. Glauberman asked me not to—I think you will be damned before you start. That is my opinion.

Mr. Glauberman: I intended tonight if possible to ask every man his connection and relation with Mr. Weinberger. On second thought I came to the conclusion not to do it, and I will give you the reason why, personally, as I can see, a real outsider in this case, because I think, as I told you, gentlemen, I didn't know anything about New Jersey Bankers until late in the

summer. I was away all summer in Europe and didn't know about this business in New Jersey. As an outsider, and looking at a stockholders' proposition, simply from a point of stock, I believe—not the stockholder votes but the stock votes, I believe the law is with me, and I feel that that information—if any individual stockholder wants to ask anyone, there is no objection; but for me to now question the nominee, I believe would be to go out of my province. I will do that only for the purpose of giving the Court a statement, that is all. If Mr. Louden wishes to know from any particular candidate, whether they have relations, or are relations, of Mr. Weinberger, or whether they have any promise made to them, I shall be glad to have him ask the question; but personally I do not think it should be done. It is not fair to the Weinbergers, it is not fair to the Court, and it is not fair to us here. The Court will scrutinize everything which he thinks it is proper. Leave that to the Court.

Mr. Grossman: I move that we proceed with the balloting.

Mr. Glauberman: Please do not vote if you have not cancelled your proxy here. Those of you who have appointed a committee, without raising any thought of you who have appointed a committee, and have not revoked your proxy, do not vote again. Before you vote, sign a slip of paper. Those of you who handed up your private proxies, running to themselves, please sign that ballot, and do not vote for more than nine. Check off the name either by a cross or otherwise, in the box. If you vote for more than nine, the ballot will not count.

(Nobody can vote for less than nine.)

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Mr. Glauberman: Nobody can vote for less than nine, and the nine highest will be elected. Inspectors please collect the ballots.

Mr. Nierenstein: Everybody please sit down and let the tellers collect the ballots. That is the only way we can do it orderly. Anybody not handing in his ballot of course will not have his vote counted; and please hand in your votes to the tellers.

Mr. Nierenstein: (after waiting a few minutes). I want to ask you whether you have all concluded balloting and handing in your ballots to the tellers. If there is anyone who still has a ballot, please let me know.

(No response).

Mr. Kipnis: I want to move that the board of directors that is going to be elected tonight, petition the Court to vacate the receivership or instruct Mr. Glauberman to do it for them.

(Motion seconded).

Mr. Nierenstein: You have heard the motion. The motion you heard is seconded. The motion is to the following effect, as I understand it: That the stockholders today assembled, represented here in person and by proxy, request and direct the directors to be elected by them this evening to forthwith in due order and by proper means to petition the Court of Chancery, which I presume would be returnable before Vice Chancellor Backes, which has been handling this matter from the very beginning, to vacate the receivership and restore the company to the stockholders in accordance with the provisions sent out to all the stockholders of record as appears from the books in the possession of the receiver. The list of names and the envelopes

have been addressed and obtained from there, to some 10,500 stockholders, and the notice being contained in the proxy given to the Stockholders' Protective Committee, and a notice published and sent to the stockholders, and that (interrupted)—

Mr. Kipnis: Whatever you are saying I was supposed to say.

Mr. Nierenstein: There was a second part to this motion, as I understood it. My own confreres argue with me as to what the gentleman said—and that the stockholders here request and direct the directors to take these measures and steps for the benefit of the stockholders through Isidor Glauberman, who appears as New Jersey counsel for the Stockholders' Protective Committee in this matter, and through whose efforts this meeting has this day or this evening taken place. I understand that, Mr. Kipnis, to be the general spirit of your motion, and I have tried to express it so that it will be clear on the record.

Mr. Miller: I second the motion. I would like to ask whether the demand of the receivers for $75,000, has been granted.

Mr. Nierenstein: As far as we know, no official action has been taken by the Court of Chancery with respect to the application for the allowance of $75,000. At the last hearing before the Vice Chancellor, Mr. Glauberman presented the reasons why the stockholders felt that the allowance should not be granted, but no official action in so far as I know, has been taken.

Mr. Miller: I want to suggest, then, that the mover of the motion permit you to incorporate in his motion, as you have outlined it, that the demand of the receivers for $75,000, be denied.

Mr. Nierenstein: If you will make that in the form of a motion—

Mr. Miller: No; just incorporate it.

Mr. Kipnis: You can amend the motion.

Mr. Nierenstein: With the consent of the mover of the motion, the motion is to authorize the directors to oppose the allowance of $75,000 as an intermediate allowance to the receivers and their counsel.

Mr. Miller: Don't make it as an amendment. The mover of the motion allows you to incorporate.

Mr. Nierenstein: Then it is incorporated into Mr. Kipnis' motion.

Mr. Grill: I move that the motion be laid on the table until the personnel of the board of directors has been determined.

Mr. Quint: I second the motion.

Mr. Nierenstein: The Chair so settles it.

Mr. Quint: I agree with the last speaker in every respect. I think that is a matter that should be left entirely to the board of directors when they convene for their action, they will do what is best in their judgment, and they will do it not only for themselves but all the other stockholders.

Mr. Nierenstein: I understand that that was not the spirit of Mr. Grill, who made the motion, that the matter be tabled.

Mr. Grill: I renew my original motion that it be tabled.

Mr. Nierenstein: It is so tabled, the Chair so settled.

Mr. Grill: To see what kind of a board we have.

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Mr. Nierenstein: Have the tellers returned? Have the inspectors of election returned yet? We are still in meeting. We haven't much longer to meet, because the hour again is late. Of necessity we must wait for the inspectors of election to report.

Mr. London: Have the Stockholders' Protective Committee balloted their votes?

Chairman Ryan: They are still balloting.

Mr. Grill: As a matter of fair record, a court record, I demand that the votes of the Stockholders' Protective Committee be openly recorded in the minutes of this meeting.

(Motion seconded).

Mr. Glauberman: I think it is out of order. First of all the tellers should go out and find out what the result of the tally is; then it will be in order to find out how the proxies voted, how the others voted.

Mr. Grill: If my motion is out of order, I say that at some time before this meeting adjourns, that their vote be officially recorded.

Mr. Nierenstein: The Chair rules you are fully in order, that no announcement be made until the tellers or inspectors of election, report to this meeting the complete result of the tally of the votes, the proxies and the votes cast.

Mr. Samuel Hershenstein: Mr. Chairman, may I suggest, to make everybody feel right about the situation, that you appoint two other disinterested persons from the audience here to go out with the tellers and assist in the job.

Mr. Bachrach: Just what do you mean, disinterested? Aren't we all interested?

Mr. Glauberman: Point of order. Two tellers were appointed. They will swear to the correct-

ness. If you challenge them, we will have another count. Every proxy will be impounded.

Mr. Hershenstein: Very well.

Mr. Glauberman: I will act for a few minutes as chairman, if you don't mind. I may entertain you with a few jokes.

Mr. Bachrach: Very good.

Mr. Glauberman: I want to have a little confession between me and yourselves. First of all, I want you to know that as an attorney I have certain obligations as to my duties. After all a lawyer does not just work for nothing. How is it, what does he do? Mr. Nierenstein, when I was in Columbia Law School, he was the editor-in-chief of the Columbia Law Review. He is a Doctor of Philosophy and quite a scholar. He graduated, I graduated, and went in different parts of the world, and one day I get a call, I think it was December 11th, to come to see him, and that was the New Jersey matter. I came to see him. He said, "I am calling you in reference to the New Jersey Bankers case." I say, "I know nothing about this case; give me a day to look over the matter." The next day I came again to his office, and I told him then, "I don't think I am the man for it; you need a big man, a big shot." So I asked him, "Have you got money to pay a big man?" He said, "How much will it cost; I will try to get you the biggest man in New Jersey;" and I promised him. I tried that day to get a real big man, but that big man told me he couldn't afford to bother with the New Jersey Bankers. I then told him, "I will try to do my level best," and I went over on Tuesday to Vice Chancellor Backes for one purpose, to get an adjournment. I succeeded in

getting that. Before that I was warned not to be near Weinberger, never having met the gentleman before, so on December 16th I became very curious after looking over the papers to see this man, so at 6 o'clock I found out, at 60 Park Place, he came up to me. I met a youngish Jewish man and I said, "Are you the Weinberger?" He said he is. I didn't ask him for an affidavit; I took his word for it. I asked for some information. "How is it that the company didn't file any affidavit, and how is it certain things were not done?" Then I told him that tomorrow morning I am going to object to certain things. He said, "I am going to object too." I said, "I shall be glad to co-operate with you." He said, "I shall be glad to co-operate with you." So the next morning we appeared in court, and curiously enough Mr. Weinberger was sitting near me and I was sitting near Mr. Weinberger. Well, I was told somebody said that I am the tool of Mr. Weinberger that day. I said "That is interesting; I know very few people that use me so far as a tool; I would like to meet them individually."

About the conversation, I must tell you that I asked Mr. Neirenstein, "Have you got any money?" He said, "Yes, we collected a few hundred dollars, ten cents from some men, and there will be a few dollars to pay you; but he thinks it is a good cause; will you jump into it?" I just saved the City Trust directors in New York from indictment; I quashed the indictment, holding the statute unconstitutional. A little publicity of my own, so that I am really good. Take the next job, I think there is a chance, look over the papers, if you can *convince* Vice-Chancellor Backes that these stockholders mean well,

he will dissolve the receivership; he is a fearless man, he will do what he thinks is right, and then what develops? My office is in Union City. I found myself going constantly to Miss Matey, the receiver's office, of which Miss Matey has charge. I asked Mr. Weinberger, "May I use your office?" He said, "Anything you want." Wonderful; and I made use of it. Then I decided to follow Vice-Chancellor Backes' suggestion that nothing but only those stockholders who have large interests should be represented on the board of directors. I told Mr. Weinberger that is my intention, to recommend nothing but large stockholders. The first name I find, the largest stockholder I see, is a man named Emanuel Kaplan. Who is he? I am told he is a brother-in-law of Mr. Weinberger. I say, "What of it, if he is a nice man, he will tell the Vice-Chancellor he is a brother-in-law." All right. I can see no legal reason for anybody to be on this board, and if you Mr. Weinberger—by the way, the second time I met him. "If you think you will qualify and the stockholders will elect you, go on the board." I didn't know anything about the past history; I was going to do a job, and report to the Court a story. Another thing developed. I think we must tell you the full story. After I was in the case I discovered there was a case of Winston against Security, and Mr. Winston sued in behalf of himself and all the stockholders, for an alleged conspiracy. I never read the complaint or knew about it. I said "That cannot go on. I have a job to do. I cannot permit you fellows to fight in the Federal Courts while I am in Chancery." Then I discovered on Tuesday that this case is on for trial on Thursday, yesterday morning. I went

immediately to the lawyers for the receivers, and I said, "I object to this case going on; give us a dismissal. My advice is to dismiss this case. I have nothing to do with this case; you will interfere with me." Mr. Nierenstein, who happened to be my New York associate, said, "No, we think we have a case and it is our duty to go on." When I left him I said, "Please get an adjournment of that case." He said "we will try." Yesterday I read in the newspaper that Mr. Weinberger appeared for Mr. Winston and tried the case. How is that? I called up immediately, but I am told at the last moment there was no money to get counsel, they didn't have funds, and Mr. Weinberger volunteered, as the man who knows most about this case. I said last night, "This must stop immediately, and unless you stop I withdraw as counsel for your committee." Everybody objected to me. I said, "I am sorry, I am short enough of money, but if you like me to be your counsel you must obey me." I went to bed about half past three this morning; 8 o'clock I was on a train to Trenton, and I called up Mr. Winston and I told him, "Mr. Winston, if you want to be on this protective committee, you must withdraw from that suit in the Federal Court. I cannot afford to have that Federal case involve New Jersey Bankers or to interfere with my plans before Vice Chancellor Backes, or with my plans before the stockholders;" and I appeared this morning before Judge Avis in Trenton and formally asked for a continuance, and though the other side, and associates, came with their witnesses ready to go on, I insisted that the case must be dismissed, and it was dismissed.

Mr. Nierenstein: Discontinued.

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Mr. Glauberman: The reason I am telling you this is because I find myself in a very curious position. I have to also ask myself and my conscience, what to do, and I wasn't maybe so ungrateful to my associates, despite the fact that they disagreed with me. Something very interesting happened tonight. A gentleman came to me and asked me for whom the proxies will vote. I said, "I don't know; you will have to ask them." He said, "You know." By the way, before that several people came to me and asked me will I put them on this ballot, will I consent to this and that. I said, "I consent to nothing; I have nothing to do with this matter; my object is, let them elect and let us go before Vice Chancellor Backes and tell him the story, and furthermore, any Weinberger man who is going to be on, I want that to be told to Vice Chancellor Backes. I am only a lawyer, and a reporter. Then this gentleman came and he said he represents a man with 5,000 shares. He said, "Will I be on the board?" I said, "I don't know if you will be elected there." "Give me an answer yes or no." I said, "I am sorry; I cannot be browbeaten into any answer." "This threat came to me before the vote, that unless I guaranteed that the proxies are going to vote for this gentleman, there will be publicity in the newspapers that Mr. Weinberger has settled who will be on this board, and furthermore, there will be a paper filed before Vice Chancellor Backes, that I am nothing but a tool of Weinberger and subject to his dictation." I sent the following message to be conveyed to Mr. Weinberger and to the gentleman: "Tell Mr. Weinberger to go where he belongs," and this gentleman can do what he wants. When that reached the ears

of my committee, they asked my advice. I said, "I have no advice; you go in there and lock yourselves in and report your vote, and let the devil take the hindmost." You know, after all, lawyers have several pays; one pay for a lawyer to feel he has done a job; another pay is to have his conscience clear. In this case I will confess to you I have not received five cents so far, not even car-fare, and I have put in, I don't know how many hours—the last time I was in my office, which was two and a half days ago, I know in the last 48 hours I slept exactly six hours, in the 48 hours. Personally I have no fear of any conscience in this matter so far as I am personally concerned. I have seen Mr. Weinberger every day practically in the last few weeks. I need him very badly for this case, to find out what I want, and that is all. He is the only gentleman who is able to give you information. I only came to him yesterday and told him this: "I have been informed by the receivers that if you will give us information against the Hobart deal, they can proceed, and set aside that deal; will you give us information?" He said, "Mr. Glauberman, I will give you the information." I said, "You remember I am going to bring it before the receiver and put you through a grill." He said, "Go the limit." This is my position in this case; I honestly do not know what the ballot is, honestly, because when I closed the door on my proxies, I had not seen the tally. I don't care what the tally is. If that gentleman is on the board who threatened me, I am very sorry personally, but I shall not interfere with it. I am very sorry, because I am sorry for one thing. I am sorry for the gentleman, I am sorry for that myself. I am sorry for

the man who browbeat me by an implication, a threat. I believe it was highly unethical for him to attempt things he had no business to attempt. He has only seen me twice; he met me twice in his life; he has not known me at all; he does not know what I went through in life. I can still stand on my feet and meet anybody. It is true I was born on the other side. I am not ashamed of it. I am rather proud of it in a way. I am only 16 years in this country. Right or wrong, it don't make any difference what nation or country we come from. I am sorry for myself, because if this gentleman is on the board, and if the proxy is voted in, knowing of that fact, I shall be very sorry for myself that I represented him, and I will openly say that if I find that this gentleman has been elected, I withdraw from the case completely. Furthermore, I shall refuse any compensation for the work I have done so far. Now, the reason I say this is on account of this: You know cases go and come; but a lawyer remains. I only got this afternoon a request to go into another case. "I am sorry" I said, "I cannot see you until Monday, but I shall not sell myself for any case or to anyone under any threat." I would like this gentleman who threatened me to get up and make this public accusation against me; but I will ask you one favor, to point out not only generalities, but point out the facts which in any way he thinks that I am a tool of anybody. What is the evidence? What is your definition of a tool, Judge? A man who does not use his independent judgment is nothing like an inanimate object, but someone else's mind, and uses it this way or that way. I do not consider myself an inanimate object, a tool of anybody, and

there is no man who has yet been able to use me as a tool.

(Applause).

For that reason I have never belonged to any organization or party, Democrat or Republican, because I do not believe to give my independent mind away even to a majority. I usually come out right. I don't belong for that reason to clubs or fraternal organizations, for that same season. Is my definition correct, Mr. Bellet, of a tool?

Mr. Bellet: Yes, it is.

Mr. Glauberman: I want to ask that gentleman to be fair with me, as I am fair with him. If he does not care to make the accusation against me, we will forget it; but if he does, I would leave him to do it, and I want him to point out the facts and I want you to listen to them, and then I ask you this favor, to give me your expression one way or the other. It won't make any difference, to be very frank with you; but it will give you a study in human psychology, whether I can trust human beings, or whether I cannot; but if you can go through life fighting for what you think is right or just, or just have to give in and be a coward and say "Go away, I am afraid I will do what I want." Thank you.

(Very loud applause.)

Mr. Abraham Grill: The object of the last remarks is the gentleman who is now taking off his coat; and if I am permitted to answer, I won't take up quite as much time.

Mr. Nierenstein: Please give Mr. Grill your best attention. I know it is hard to remain quiet all this time; but do the best you can.

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Mr. Grill: I am also going to tell you some stories, but they will not be funny stories. The stories that I am going to tell you are going to deal in facts, not in allegations, and not in charges. It seems to me that the previous gentleman protested a little bit too much, and that he was sort of giving an apology for his conduct; in so far as I am concerned none was demanded. As far as the attorney for the committee is concerned, he is a duly licensed and registered attorney, and I presume that means fulfilling his oath to the Constitution of the United States, and to the Constitution of the States of New Jersey and New York, when he says that he acts in accordance with his conscience, because that is what it demanded; but I made no such threat to this last gentleman; I made no insinuation about anything except this one statement, and this is what I want to repeat to you. Mr. Glauberman this afternoon had a session with a gentleman who has been a leading light in the affairs of your company, in which there was thoroughly discussed the qualifications of all of the directors who are to be nominated this evening. Mr. Glauberman in my opinion knew before the ballot was cast, and in spite of his protestation, who was to be elected. He knew also that I was not to be elected. Let me state my own position rather clearly to you. I am a lawyer. I practice in the State of New York. I haven't the slightest or remotest personal interest in your affairs. I don't own any shares of stock in your company except by way of proxy for a man who is one of the largest stockholders, and such shares of stock as he has given me, so that in the event of my being elected, I might qualify. I didn't even know that there was such a thing

as the New Jersey Bankers Corporation until some time ago. Because, fortunately, my investments were in other directions, equally as unfortunate in their result, but I mean not in their choice, but I do find it in the newspapers that there was a great deal of publicity in respect to certain gentlemen, and that the State of New Jersey had had a great deal of trouble from a certain company which I now see is the New Jersey Bankers Securities Corporation. I represent a client who has actually invested $75,000 in this company. This man is a very wealthy man, as anybody who invests $75,000 would have to be. He believes, and so he has informed me, that there are matters in relation to this company that should receive somebody's independent judgment. He makes no accusation. He has no knowledge as to what was done with assets or what was not done with assets; but he honestly believes that somebody apart from the personnel that was identified with the previous organization, ought to at least sit in on the only board of the company that can properly and legally function, namely, the board of directors, and find out for him as well as for all other stockholders, first, what is the true financial condition of the company; second, what are the assets that it has; what are the claims that it has against all and everyone, and how can these best be realized; so this man with $75,000 of stock, asks me to come here, much against my own personal wishes, because, believe me, gentlemen, I have plenty to do in the City of New York. I came over here protestingly, and very reluctantly. I never knew Mr. Weinberger until a day or so ago when he came into my office, I believe for the purpose of sizing me up to find out what kind of a man

I looked like, and what kind of a man perhaps he might rely upon in the future. We had quite an extended conversation. I might say he is a personal friend of a client that I represent, and perhaps in talking here tonight, I am even violating the wishes of my own client, and perhaps going contrary to what he would wish me to do; and I would not have taken your time in making such an extended reply tonight, if Mr. Glauberman hadn't felt that for some reason or other he ought to make what I thought was an uncalled for explanation of his professional conduct. I wish to repeat again, and personally to Mr. Glauberman, because as far as I am concerned he is a brother lawyer, I make no charges against Mr. Glauberman, I have no threats that I hold, except this, that I said to Mr. Glauberman, as the representative of the committee, "If you go through with your contemplated program, in which you do not in my opinion permit independent directors to sit upon this board, then I shall feel it incumbent upon myself to appear before Judge Backes of your State, and reveal the facts to him so that he might know what is going on." Let me tell you something of a little history. There have been numerous conferences today all day long as to who shall be selected as directors, and there have been serious differences between the members of the committee and between counsel and the committee, all of which has been related to me, as to who shall be elected here; there has been a dominating influence, in my opinion, in the committee which you have selected as your stockholders, and I defy them to come up here and say that the matter was not discussed except between their own consciousness, and themselves knew

precisely the men for whom, before they left this room, they were going to vote, and knew how they were going to vote (interrupted)—

Chairman Ryan: I deny that accusation.

Mr. Grill: I presume you would say that. The statement was made to me (interrupted)—

Mr. By whom?

Mr. Grill: I refuse to divulge it at this time. It was reported to me that I would not be elected. Let me repeat again. I haven't the slightest wish to represent you on this committee. I don't know anything about your company, and I hope that I don't know anything further about the company; and I repeat, that I am replying only because an attempt has been made to give you a statement of a fact that in my opinion does not exist. I do know the reason. I frankly state why I was not selected on the committee. I have suspicions, but I do not care to indulge in them, because that is not in my province, to indulge in suspicions; but I do know the workings of this committee; an election by directors by those who control the majority vote, and I do know the conversation that I myself had with those that cast the largest vote; and I think I know what I am talking about when I say what I say, and in due course of time if it is necessary, these statements will appear in such form as not to be contradicted by anybody. If I have done anybody offense, or even fancied offense, I wish to apologize at this moment, because of the heat with which our last Hamlet spoke. I certainly believe that he thinks he has been injured, unless his acting was better than he even suspected himself; but Mr. Glauberman I believe, and I dislike to indulge in personalities, although a bad example has been set, has

been through many a case before, and undoubtedly will go through many a case again; and he put on a damn good show, but I am not impressed with it. That is my personal opinion. I mean as an act, yes; but as a statement of what was actually known by many men in this room before the balloting was taken, I state positively on my honor as a lawyer that it is not a clear and accurate statement of the facts. Now, what I am going to do from now on I do not know. I have no individual resentment about anything that was done here, either by those that acted, or by those that I believe are responsible for their action, and as far as I am personally concerned, I bid a fond adieu to the shores of New Jersey this evening, and unless the instructions of my own client are such, that it will again get me back into the commonwealth of New Jersey, I shall not appear here again; and I want to thank you very kindly and sincerely for the opportunity that you have given me to present at least one side of this case.

Before I close, I would like to make some formal motions. I speak now on behalf of my own client, Mr. Brimberg.

Mr. Levin: Wait until after the ballot.

Mr. Grill: I make them now, and you will see the reason for it. The first motion I wish to make, that I know now definitely before the tallying has been counted by your tellers, that one of the names that appears upon the committee's list for directors is Mr. Samuel N. Brimberg. I will go further. I can give you a complete list of those that the committee has voted for.

Mr. Glauberman: Go ahead, please.

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Mr. Grill: Samuel M. Brimberg is one. I made the definite statement the other night (interrupted)—

Mr. London: He is a director mentioned on the list.

Mr. Grill: The first on the list that was last shown to me, only my name appears as attorney for Brimberg, but the name of Samuel N. Brimberg as such appears upon the list of directors selected by the stockholders' committee. If I am mistaken as to that, I withdraw many statements that I have made. I rely upon that statement when I ask you to believe that the name of Samuel N. Brimberg was selected. If I am mistaken on that—I didn't see the ballot—then the information has been erroneously given to me by at least two different gentlemen in this room. I made the statement, if you recall last week, when the name of Samuel N. Brimberg was called, that Mr. Brimberg did not care to be a director in this company, because of his ill-health, and he could not give the time that was necessary in order to properly discharge his duties as a director of this company, and I specifically requested that his name be withdrawn from this list. That request was communicated to the committee; it was communicated to this meeting; and it was communicated to many others that are interested in this meeting. There was a discussion—there were many discussions had about Samuel N. Brimberg's name; and in spite of that, his name finds its way there. I did say, and I repeat it, that I requested many times, instead of the name of Samuel N. Brimberg, they put down my name. There is nothing

in it for me, and I might even add there is no compensation; but that isn't a matter in which you are particularly interested, except in the exposition of the single act itself; but I did say, because I felt that that was the wishes of my client, and that it was necessary for me to carry out his wishes and his instructions in that respect, and I was repeatedly told in a manner in which lawyers understand only too well, that I would not be a director of this company. Not in those words, gentlemen, because in these days you do not get facts by language; you get them by indirection, you get them by inuendo, by inference and by evasion, plenty of the latter. I was told only as recently as twenty minutes ago, that is, before I started to speak, that my name would be among the directors. Again I repeat, in case I wanted it, and it may even seem to you that the emphasis that I am placing upon it is such as to persuade you that I am interested, I am willing to withdraw and let Mr. Brimberg get another attorney and carry out his instructions.

I was told that it was arranged, and the committee understood, and there were discussions here in the hall and in the room, and in all places, up to the last moment, in which I was told, whatever the committee does, that is final with the committee. Now, I have no quarrel with that. That was beautiful, and as far as the record goes, almost impenetrable, if it were not for the fact that these things were known. A very nice attempt was made to side me off in a very lovely way, and the only reason I am making this statement, I repeat, is because the statement has been made.

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Now I wish to make this motion, that if the name Samuel N. Brimberg is on this board of directors, I am authorized in his behalf to refuse to qualify him, to refuse to accept the nomination of director, and his statement is he will under no circumstances act in your behalf, so if that has been done, a futile act has been made.

Can you imagine your own officers duly elected as a stockolders' committee, insisting upon voting for a man whose name is not on the list of nominees and refusing to vote for the man that he asks you to vote for, his representative, that he wishes to be his alter ego in this, not as a lawyer, but as a man whom he believes can use independent judgment as to the assets and liabilities of this company, and as to whether or not it should continue, and what its relationship should be. I move, therefore, that if you elected him, that you cancel that.

Mr. Bachrach: You cannot make that motion before he is elected.

Mr. Levin: He is out of order.

Mr. Bachrach: The man may not be elected. You are out of order.

Mr. London: You have no right to object.

Mr. Glauberman: I rule that Mr. Grill has a right to make any motion he wants; but I also want to add, let me say—

Mr. Levin: He isn't through talking; let him finish. I ask you in fairness to allow him to finish. He allowed you to finish; give him a chance.

Mr. Glauberman: I will give him a chance.

Mr. Grill: I further wish to challenge the vote before it is cast on behalf of your stock-

holders' committee, on the ground that they have not complied with the proxies which have been given them, in that it specifies they must vote by a majority of the number mentioned there, and that there is not a majority present here tonight. There is not a majority that have cast the ballot.

I further move that the vote, if any, of the trustee for 172,000 votes that have been cast here tonight for five names, which I knew about before they were cast, be cancelled and rescinded on the ground that it is not an honest, direct, fearless and unsolicited vote of the trustee in question.

I further move that in his capacity as trustee, he has not voted for the best interests of this company, I challenge the election of any of the men that this man, your trustee, or anyone else on this committee, has voted, on the grounds which I have stated.

I have other motions which I hope to be privileged to make after the ballots are cast. Thank you very much.

Mr. London: May I make one statement?

Mr. Glauberman: One moment. In order that it should be clear on the record, I want to make this very clear. Mr. Grill, first of all have you a signed proxy?

Mr. Nierenstein: Have you a signed proxy from Mr. Brimberg?

Mr. Grill: No, sir; I am here by courtesy of your meeting. I answer your question, I am here by courtesy of your meeting.

Mr. Glauberman: Though Mr. Grill has no proxy, and though I think it is improper, I

feel that that motion should be entertained and be seconded and voted on by you.

Mr. Grill: That is very kind of you.

Mr. Nierenstein: We cannot vote on anything.

Mr. Miller: May I ask the gentleman a question?

Mr. Glauberman: One moment. I am very glad that Mr. Grill told me there are several ways to find out things; one way is to be in; another way is by having planted someone who gives information. I solemnly declare to you again as a man that I do not know whether Mr. Samuel Brimberg is on that ballot; and if he does know, I say he did something which is absolutely unethical for a man to do. While these tellers were there he had no business to have someone there to spy on them and give him information; and furthermore, I say, which is of extreme importance to me, my position in this case was this, that only men who have substantial interest in this company should go in, not by representative. I do not believe that a man because he is too busy with other affairs, and wishes his lawyer to take care of them, should be on the board. I only want those men—that is my theory of this case—who really have investment. I also wish to state now, that despite the fine ability and fine declaration of Mr. Grill, that he never made any threat to me, I now will state for the record, that he told me that unless his name is on it, he will file an affidavit with Vice-Chancellor Backes, and I told him to go, he can do whatever he wants. He left for an hour (interrupted)—

Mr. Grill: I cheerfully admit that.

Mr. Glauberman: He went away for an hour and came back. Rumors began to come around where he threatened somebody. I said, whoever he threatened, if he threatens me, no matter who that man is, and no matter who that man wants, I have nothing to do with it; and when I left that committee, I will declare to you men, I have not seen their tally, and I do not know. Of course, I had an idea that they will vote actually the largest men there. I hope they will do that; nine out of twenty is not too hard to guess. I suppose when looking at that list and you see the large stockholders, and see the names, and I honestly do not know who the nine men are.

Mr. Grill: There are not nine men.

Mr. Glauberman: If the tellers are ready, I shall be glad. One thing, I want an expression from you—(interrupted).

Mr. Rosenfeld: It is midnight; I want to get out.

One of the Tellers: Mr. London was the only one who was in there.

Mr. London: Before the vote is recorded here, before the tellers make known the vote, there are many stockholders present here tonight who thought sufficiently of their holdings in the company, to come here. There were meetings, as I said, held before the stockholders came together, at which the men whom the protective committee thought should be on the board, were announced, and they were all nominated from the floor at the first meeting.

Mr. Glauberman: You mean the 500 shares or more who were invited in order to make the suggestion?

Mr. London: Yes; they were all nominated at the meeting, fourteen. I want to call attention to the fact, and for the purpose of the record, that one of the members of the committee holds 25 shares of stock, and of course it must be evident to the people here, that after a lapse of some four months, a committee getting together, and acting of its own volition, in which the members themselves are not wealthy, and who say to us that they are investing their own money in this company, when the members of the committee are unknown to any of us, and are not those large stockholders, that there must be something quite peculiar about the proceeding. Now, at the beginning of this stockholders' meeting, I challenge the 172,000 shares upon the ground that they are the property of the company and are held by the company, and that the trustee in a proceeding of this kind is violating his trust when he votes that stock, the Court having appointed a receiver for the best interests of the company, he should not have voted that stock. Now, if that stock be not voted, this entire proceeding is futile, because we cannot get a majority here, and there is no majority here.

Mr. Bachrach: That is up to the Court.

Mr. London: As Mr. Grill said, the committee must act by a majority of the committee. There was one resignation before the committee voted this evening, and one of the members of the committee is not present and did not poll his vote.

Mr. Glauberman: We have that on record. May I say this: That every objection I shall be very glad shall be noted, because my job

will be, despite all the remarks—will be this: I am going to report to the Vice-Chancellor as much as I can in a petition briefly what transpired here. I will set forth Mr. Markley's vote, and the people he voted for. I shall set forth the history of the protective committee, and show how many voted. I shall show how many the others voted. I will leave that to the Court. I will not do one thing or the other. I am a simple reporter. I did not guarantee to this stockholders' meeting—(interrupted).

Mr. London: I hadn't finished. I have one further statement to make. It was the consensus of these stockholders who thought sufficiently of their holdings to come here in person, instead of sending in their proxies, that some outsiders should be elected to this board.

Mr. Glauberman: I will report that, too.

Mr. London: I speak of people other than the group of holders of more than 500 shares; those people who were not notified of that meeting; and I want at this time to challenge the statement made, because a client of mine whom I represent here by proxy, was not notified of that meeting.

Mr. Glauberman: The list sent out was the official list received from the receivers' secretary. Whatever was there we sent out.

Mr. London: It was the consensus of Vice-Chancellor Backes, too, that members should be elected to the board who were not connected in any wise with the previous directorate.

Mr. Glauberman: I will report that to the Vice-Chancellor.

Mr. Miller: Who has voted under compulsion, and who has dictated how anyone should vote?

Mr. Grill: No one has voted under compulsion. If I made such a statement, it is a wrong statement. I said by direction.

Mr. Glauberman: If the tellers are ready I shall be glad to announce it.

Mr. Grill: I want to reply to two or three statements made by you in your last address. In the first place, Mr. Glauberman or somebody got up here and insinuated that I had spies or plants or watching the tellers. I had no such thing. One gentleman that was accused here, it may seem foolish for me to apologize for him, but I never met the gentleman before the meeting the other night. In fact, when his name was presented for discussion as to whether or not he would be a desirable candidate for a director, I voted against him. That man is Mr. London, and I don't mind saying that to your face.

Mr. London: That is perfectly all right.

Mr. Grill. I don't know whether Mr. London was out there in that room or not; but there is another gentleman in the room who told me that it wasn't Mr. London; and I think for the sake of the other gentleman, whom I know and know very well, I would prefer not to mention his name, but I want to answer the generality of the question; and if in the future I am again compelled to give the name, I shall cheerfully divulge it; but not at the present time. I wish you to believe that there was more than one gentleman that told me that, and that the other gentleman was a gentleman who has been a long friend of mine; I have known him a long, long time, and I don't believe he is a plant. As a matter of fact, I believe he is on the side that would like to see things accomplished.

Exhibit C. 2 of May 29, 1930.

I want to make one other statement. I think that from the tenor and the manner in which Mr. Glauberman's address was given, that if he has any opinion at all, he would much prefer, and probably said so long before, that I must not be a member of the directorate. Who am I, to have a serious argument about? I am, after all, only an individual. I happen to be a lawyer; and if that is enough to antagonize or infuriate others, I am sorry, but that is the profession that I have chosen; but I am here in a representative capacity, and the very man that I represented has been nominated on the board, and yet they wouldn't do him the courtesy or the honor of electing his representative. I leave it to yourselves to guess any reason.

Mr. Bachrach: I want to say a few words. I want to announce, Mr. Chairman, ladies and gentlemen, I sat here listening first to the long speech of Mr. Glauberman and the reply from Mr. Grill and Mr. Glauberman; but I take this opportunity, Mr. Chairman, to challenge every remark and every motion that has been made by Mr. Grill, for two reasons: No. 1: We don't know of any credentials, proxy or anything except his say-so, that he represents anybody. We are sitting here and listening to a lot of nonsense. Mr. Grill is a lawyer. I as a layman, I believe Mr. Grill ought to know better. Maybe I am wrong; I wish to be corrected; but I think I am right, before he got up and made any motion, before he asked to be elected on the board, which he was very anxious to be elected on, from what I understand, he should say to the Chairman: "Mr. Chairman, here is my credentials, here is my proxy from the gentleman who is my client. He sent me here to represent him. If you like me, all right; if you

don't, I will see who the others are that you are electing. I suppose the majority shall rule." He didn't say that. He stood here and he made a lot of speeches for publicity for the Judge, without any credentials. I take it for granted that he is a gentleman; I can hear the way he talks; but that is not the way to come before a body of men and women representing the New Jersey Bankers.

Mr. Grill: I told you I was here by the courtesy of your Chairman and Mr. Glauberman.

Mr. Glauberman: I am recording the courtesy now; but I wasn't asked before.

Mr. Bachrach: That is one reason. The second reason for Mr. Grill's speech I learned, and everyone else learned, if he was elected director, he wouldn't care who the other eight people are, he would have no grievance with anybody, but if he is elected director, the others are no good. Ladies and gentlemen, there are twelve men and ladies here tonight that will not be elected, because we have twenty-one names, and we have the right to elect only nine. Naturally the twelve will be sorry; but none don't seem to be as sorry —I don't think they will be as sorry—they are in doubt whether they will be elected or not. One was Mr. Grill, is the only one that is sorry because he thinks he wasn't elected and he takes it for granted that Mr. Brimberg was elected. I would like to see the facts when we hear the report of the committee.

Mr. Glauberman: Mr. Chairman, as counsel for the committee, I now wish to hear the ballot. I want you to remember that two facts of information which Mr. Grill had one way, which I did not have, by the way, that Mr. Brimberg was elected, secondly, that Mr. Markley voted only

for five men, and you knew every one of the five, every one of the five men. I therefore wish that after the vote is cast I would like him to tell us, first, how the committee voted—first, how the 172,000 shares were voted by Mr. Markley, the names, then how the committee voted, and then the rest of the votes.

Mr. Nierenstein: The tellers will first give the 172,000 votes, then the vote of the Stockholders' Committee holding proxies, and lastly the votes of those who balloted in person. The two tellers having inspected and tallied, will not make their report.

Mr. Feld (teller): The total on the list on the ballots were twenty in all. The first one, according to the majority number, Hyman Kraemer, 321,166¼.

2. Roscoe Strickland, 320,966.
3. Samuel Silberstein, 320,701 1-6.
4. Samuel Kappel, 319,485¼.
5. Fred. Christie, 317,026.
6. Chas. J. Ryan, 315,684.
7. Samuel Kipnis, 310,412¼.
8. Abraham Quint, 148,687¼.
9. Joseph Socolof, 3,352.
10. A. M. Grill, 3,276.
11. Irving Rosenfeld, 2,758.
12. Henry Louden, 2,155.
13. Leo London, 2,140.
14. Frank Winston, 2,127¼.
15. Emanuel Kaplan, 2,056¼.
16. Daniel Fraad, 1,590.
17. Lillian Kavovitz, 1,455¼.
18. Samuel Berman, 490.
19. Samuel Kleinhaus, 460.
20. Abraham Friedland—

Mr. Baracas: Where is Mr. Brimberg's name?

Mr. Nierenstein: The tellers will give in due order what they have been requested to give for your information.

Mr. Fried (teller): We are not through yet. There were two votes that have been disregarded. The vote of Sam Capnus, he voted for ten directors instead of nine, and the vote of Gordon M. Williamson voted for ten instead of nine.

Sam Capnus voted for ten directors, and voted 3,500 shares, and Gordon M. Williamson voted 150 shares for ten directors.

Mr. Nierenstein: Ladies and gentlemen, I think the next thing in order is to have the ladies and gentlemen present here have the tellers inform them what the vote of the trustee was and for whom, giving the names and amounts as he has them.

Mr. Glauberman: A question was just raised, and I as counsel must move on it. It is rather disagreeable. The question was raised by a lawyer here, whether I can with propriety set forth the vote of Mr. Markley without his consent, because he is a trustee.

Mr. London: It is not an Australian ballot.

Mr. Glauberman: I am going to answer "yes." I will take the responsibility and will disclose the vote to you. I want you to read the five names, whatever they are, to the audience.

Mr. Freed (teller): The votes given by Mr. Edward A. Markley is for 172,034 shares held by him for the best interests of the company, and 100 shares held by him personally, for the following directors: Roscoe Strickland; Fred C. Christie—the same as Frederick Christie; Samuel Kappel; Samuel Kipnis; Samuel Silberstein—same as

Samuel Silverstein; Hyman Kraemer, and Charles J. Ryan—seven in all.

Mr. Nierenstein: The next thing in order is the vote of the committee.

Mr. Bachrach: That is right.

Mr. Freed (teller: The ballot of the committee is, Hyman Kraemer, Roscoe Strickland, Samuel Silverstein, Samuel Kipnis, Samuel Kappel, Frederick Christie, Charles J. Ryan and Abraham Quint.

Mr. Bellet: By a strange coincidence, the very same men.

Mr. Grill: They only voted for eight men.

Mr. Nierenstein: Eight men voted for.

Mr. Bachrach: How many votes.

Mr. Freed (teller): 142,645.

Mr. London: How is it signed?

Mr. Freed (teller): Signed by Charles J. Ryan, 165 Broadway, New York City, proxy, and Frank S. Winston, 311 East 72nd street, New York City.

Mr. Grill: Signed by two men.

Mr. London: I make an objection to that vote at this time.

Mr. Nierenstein: Please address yourself to the Chair.

Mr. Glauberman: The question was asked from me before whether the proxies can vote, and I ruled as follows: The proxy provided for the following four men, or any majority. Mr. Louden resigned, as you remember, on Tuesday night. There remained three thereafter. The third man did not show up; therefore two out of three is a majority, in my opinion; but I am going to submit all those questions, in a statement of fact to

the Court. Now, I would like you to tell us who are elected.

Mr. Nierenstein: The first nine.

Mr. Hershenstein: Before you make that decision, will you please answer the following inquiry: Does the record show a majority in attendance by proxy or in person, of all the outstanding stock as of the date when the books closed; because my own impression is it does not.

Mr. Nierenstein: The records do show that.

Mr. Hershenstein: Will you please show it in writing; in other words, what is the total outstanding stock and state the amount recorded as actually voting in person and by proxy; and I think you will find you have not 51 per cent. thereof.

Mr. Glauberman: Everybody knows everything here except poor me, who is supposed to know everything himself. At this moment I do not know the exact amount. If we have no 51 per cent. it will be reported to the Vice-Chancellor. If we have, it will be reported. They checked all day. The date was December 24th, as a matter of law twenty days before January 14th. We have done this, we found those that we could check up and made a special list of those that we didn't get a chance to check. If we find the records here will show there is a majority, it will be declared as a legal board, if the Court will accept it, so every challenge, make it on the record, and even if you don't make it I assure you and I believe now that this mysterious course about Mr. Brimberg and Mr. Grill—(interrupted).

Mr. London: There is no place for that here.

Mr. Glauberman: It is now very clear, and I am very happy about it, that those proxies did not violate their conscience; and I want to congratulate them personally.

Mr. Glauberman: I would like to say this, that I will make every objection that I can see before the Court myself; I will recite all the objections; and I will abide by the Court's ruling, and I hope you will do it in the same spirit.

Mr. London: I want to make a challenge before you adjourn. In addition to the previous challenges, I challenge the vote of 27,000 and some odd votes voted by the proxies tonight, upon the ground that it was not ascertained before this meeting to whom those proxies belonged, or whether they were proper proxies.

Mr. Kleinhaus: I wish to enter on the record as a challenge, the vote of Mr. Markley. A challenge was made by someone who might not be recognized, inasmuch as I understand he has not proper credentials. I have. My grounds are these: In my opinion Mr. Markley was not here when the regular balloting was going on, and was not afforded the privilege of an early ballot. Am I right, or not?

Mr. Nierenstein: I understand your question; the challenge goes on the record; it will be for the Vice-Chancellor to decide.

Mr. Kleinhaus: Was he here?

Mr. Glauberman: Yes.

Mr. Nierenstein: He was here.

Mr. Kleinhaus: Was he here when the regular balloting went on?

Mr. Nierenstein: He was.

Mr. Glauberman: He was in the room.

Exhibit C. 2 of May 29, 1930.

Mr. : You are wrong. I move we adjourn.

Mr. Miller: I make a motion to the effect that the course pursued by Mr. Glauberman in endeavoring to promote and conserve the interests of the New Jersey Bankers Securities Company, are eminently satisfactory to the stockholders assembled at this meeting, and we return to him our heartiest thanks for the labors that he has performed in our interests.

Mr. Bachrach: Second the motion.

Mr. Capnus: I want to amend this motion that the stockholders assembled here tonight express the fullest confidence in the integrity and honesty of Mr. Glauberman.

(Loud applause.)

Mr. Nierenstein: Personally, I wish to add one word: In behalf of the Stockholders' Protective Committee, one word of thanks in closing to them for having brought it about.

(Motion carried.)

(Motion made and seconded that the meeting adjourn.)

Exhibit D. 1.

EXHIBIT D. 1.

NEW JERSEY BANKERS SECURITIES CO.

Counsel to Receivers:
LEBER & RUBACK,
60 Park Place,
Newark, N. J.

JOHN J. STAMLER and
NICHOLAS LA VECCHIA,
Receivers,
60 Park Place,
Newark, N. J.

TO THE STOCKHOLDERS OF THE NEW JERSEY BANKERS SECURITIES CO.:

The Chancellor of the State of New Jersey wants to hear from you whether you want your share of the Company assets paid to you or whether he should hand the property back to a board of directors to carry on the Company's business. He also wants to know whether the board of directors recently elected are satisfactory to you or whether you want to vote for a new board. You must send him your answer at once.

The Company has about one million seven hundred thousand dollars ($1,700,000.00) to be divided among shareholders. It ought to net to each share between three and four dollars. (The Company also has assets of uncertain value of about two million dollars.) It is proposed to pay at the present time one dollar and a half a share and the balance in a short time if the Company is to be wound up. The new board of directors want the Company to go on with its business. They think they can invest the capital and make the stock worth more per share than will be paid to you if the money is divided among the stockholders. It is for you to say what you want done.

Exhibit D. 1.

This letter is written by direction of Vice-Chancellor Backes who has the trust in charge for the Court of Chancery of New Jersey. GIVE YOUR ANSWER ON THE ENCLOSED POSTAL CARD *BY RETURN MAIL.*

Annexed hereto is a list of the directors elected recently at a meeting of about fifteen hundred stockholders out of about ten thousand. We understand all stockholders had notice of the meeting. Also annexed is a statement of the standing of the Company prepared by us.

Yours very truly,

JOHN J. STAMLER and
NICHOLAS LA VECCHIA,
Receivers,

NEW JERSEY BANKERS SECURITIES CO.

March 7, 1930

QUICK ASSETS

Demand Deposits	$ 101,570.75
Time Deposits	752,701.59
Municipal Bonds, etc.	256,525.98
Other stocks (at present market)	413,724.00
Dividends and Interest Accrued	3,578.76
Balance due account sale of Lebanon National Bank	175,000.00
	$1,703,101.08

Above to be divided among 460,625¾ shares after administrative allowance approximately. Harry Weinberger's stock (188,034) shares, not included in this calculation. $3.50 per share.

Exhibit D. 1.

ASSETS, VALUE OF WHICH IS UNDETERMINED AT THIS TIME:

Note of Harry Weinberger.....	$2,300,000.00*
Notes Receivable.....	51,705.00
Furniture and Fixtures	2,331.45
Accounts Receivable.....	9,581.90
Deposit to secure purchase of Journal Square stock.....	50,000.00
	$2,413,618.35

*Secured by guarantee of nine directors—$450,000.00.

1,000 shares of Hobart Service.

188,034 shares of New Jersey Bankers Securities Co.

Title to Gregorian Apartments.

In the opinion of the Receivers, the collateral securing the Weinberger note is worth approximately $375,000.00, exclusive of the 188,034 shares which have been disregarded, for the reason that the dividend, if to be declared, is less than the indebtedness of Mr. Weinberger.

LIABILITIES

Claims against New Jersey Bankers Securities Co. in dispute.....	$ 67,266.72
John Warren (claim in litigation)..	306,108.66
	$ 373,375.32

(OVER)

Exhibit D. 1.

BOARD OF DIRECTORS

Name	*Address*
Roscoe L. Strickland	19 Academy Street, Newark, N. J.
Hyman Kramer	62 Central Avenue, Clifton, N. J.
Samuel Silberstein	600 Broadway, New York City
Samuel Kipnis	270 Eleventh Avenue, Long Island City
Frederick Christie	1281 Broadway, Brooklyn, N. Y.
Charles J. Ryan	165 Broadway, New York City
Joseph Socolof	135 Kent Avenue, Brooklyn, N. Y.
Abraham Quint	1451 Broadway, New York City
Samuel Kappel	160 Jay Street, Brooklyn, N. Y.

Exhibit D. 2.

EXHIBIT D. 2.

Tabulation of Postal Card Returns.

Plan No.	No. Voters	No. Shares
1	1,201	82,835¼
2	1,967	137,270¾
3	218	13,592½
	3,386	233,698
Cards not signed		
1	13	386½
2	33	1,503¾
3	6	213½
		2,103¾
Cards signed; vote not indicated	14	886½
Cards signed; two choices	36	6,051¾
Votes not included, per Mr. La Vecchia		
Plan No. 2, H. H. Weinberger		16,652
Cards not signed; vote not indicated	3	55
Card not signed; two choices	1	50

(Post Card.)

NEW JERSEY BANKERS SECURITIES CO.
60 Park Place
Newark, New Jersey

TO THE RECEIVERS No.
NEW JERSEY BANKERS SECURITIES CO.
I want my share in cash now.

—or—

I want the company turned over to the directors named in your letter.

Exhibit D. 2 of May 15, 1930.

—or—

I want a new board of directors.

_____

Signature of Stockholder

_____ _____

No. of Shares Address of Stockholder

PUT AN "X" ALONGSIDE WHICHEVER ONE OF THE ABOVE REQUESTS YOU FAVOR.

EXHIBIT D. 2 OF MAY 15, 1930.

MINUTES of STOCKHOLDERS' MEETING of the New Jersey Bankers Securities Company, held at the Robert Treat Hotel, Newark, New Jersey, on Thursday, April 17, 1930, at 7:30 P. M.

MINUTES of Stockholders' Meeting of the New Jersey Bankers Securities Company, held at the Robert Treat Hotel, Newark, New Jersey, on Thursday, April 17, 1930, at 7:30 P. M.

Ralph E. Lum, Esq., Master, presiding.

Master: Ladies and Gentlemen, this is a meeting of the stockholders of the New Jersey Bankers, held by direction of the Court of Chancery of New Jersey.

The regular notice has been issued, and this evening, at seven-thirty, the Robert Treat Hotel has been fixed as the time and place for holding the meeting.

Exhibit D. 2 of May 15, 1930.

I am, by an order of the Court of Chancery, directed:

a. To preside at said stockholders' meeting.

And I will now proceed to so preside.

b. To declare the ballot open for the election of directors and to keep such ballot open for one hour.

Directors may now be nominated.

Mr. Abraham Quint: I move the following resolution:

"Be it Resolved that the Board of Directors to be elected at this meeting, to serve until the next annual election, to take place on the third Tuesday of September, 1930, in accordance with the By-Laws of the Company, shall be nine."

Mr. Frederick Christie: I nominate the following nine as member of the Board of Directors:

Roscoe L. Strickland
Hyman Kramer
Samuel Silberstein
Samuel Kappel
Frederick Christie
Charles J. Ryan
Samuel Kipnis
Abraham Quint
Joseph Socolof

Master: Are there any other nominations?

Mr. Harry A. Augenblick: Mr. Chairman, I think before the meeting proceeds—I wasn't here the previous five minutes—a poll should be taken to ascertain whether or not a majority of the stock issued and outstanding is present at this meeting, because as I understand, the By-Laws provide for a representation of fifty-

one per cent. of the stock at a stockholders' meeting, which is what is commonly known as a legally constituted meeting, and I think that should be ascertained before we proceed with any order of business.

Master: The Chair will rule as follows:

This is not an ordinary directors' meeting held pursuant to the By-Laws. This is a meeting held pursuant to the Court of Chancery. The Court of Chancery directed me to preside at this meeting, (a), and (b) to declare the ballot open, and I will accordingly so proceed.

I will note your objection, Mr. Augenblick.

Any other nominations?

(No response.)

Are there any other nominations to be made?

(No response.)

You have heard the nominations of the nine. I will now declare the ballot open for the election of directors, such ballot to be kept open until twenty-five minutes of nine.

Were those nominations seconded?

Mr. Ludlow: I second them.

Mr. Isadore Glauberman: I have a list of the directors of the New Jersey Bankers, and also a batch of proxies, and I am giving these proxies to be counted.

Master: I am to report to the Court by the twenty-third of April, and I have no doubt by that time I will have ample opportunity to have checked every proxy. There are printed ballots here for the nine who have been nominated; and of course, although no other nominations have been made, any one may be voted for, and

there are blank ballots for any one here who wishes to vote.

Mr. Joseph M. Stein: Is that the only purpose of the meeting, to nominate directors?

Master: I am directed to report to the Court on April 23, or no later than April 23, the result of the election, together with such special matter as in the opinion of said Master should be reported to the Court, and it might be that under that—

Mr. Stein: Suppose I should object to the election of any directors, and would be in favor of a liquidation of the company?

Master: It wouldn't make any difference, because by the order of the Court, I must hold a meeting. Under my view, if there are only two stockholders here, and both refuse to vote, I would, nevertheless, hold the meeting.

As every vote is cast, I must have the name and the number of shares, and if you can—

Mr. Glauberman: May I ask for some instructions?

Master: Yes.

Mr. Glauberman: Will you please instruct, if you don't mind, the proxies how to vote? They have a certain number of proxies that came in, and I wish you to inform them how should they sign the ballot that you want them to sign; should they sign the ballot as proxies, and leaving the shares blank, to leave that to you when you check it up; or should they put down the estimate which we have now?

Master: You mean an individual stockholder who is here?

Mr. Glauberman: No, there are three proxies, Samuel Silberstein, Hyman Kramer and Roscoe L. Strickland, that have to vote. Now, the information I wish from you is, how should they vote? Should they sign the ballot—should they sign each individual voting for so many proxies?

Master: I should say so.

Mr. Glauberman: And give the estimate figure that they have taken?

Master: Yes. Any stockholder here in person, even though he may have given a proxy, may vote in person, by cancelling in writing his proxy.

Mr. Stein: A point of information. May I ask this: Was the meeting called solely to elect a Board of Directors, or was a discussion to be thrown open on the floor as to whether it wouldn't be advisable to liquidate the company and have no board of directors?

Master: The order that is before me directs me, as I have already read, very clearly: (a) to preside at said stockholders' meeting; (b) to declare the ballot open for the election of directors, and to keep such ballot open for one hour. (c) To impound all such proxies, &c., and (d) to report to the Court not later than April 23. That is all I am concerned with, as I shall proceed according to the order of the Court of Chancery.

Mr. John F. Kuhn: Are these nominations closed now?

Master: They are now. The ballot remains open for one hour, and anyone may vote for any one.

Mr. Kuhn: Mr. Chairman and Stockholders: This is the first time that I had the pleasure

or displeasure to be at a stockholders' meeting of the New Jersey Bankers Securities Company. Most of you probably that are here are just like myself, stockholders that have put your money into something in which you had faith, and since you have put your money in, you have seen as to what happened with the assets of this company. Now, some gentlemen get together very nicely and they organize themselves, and they send you out printed literature, and ask you now to come here and elect them.

It seems to me that even politicians take their constituency into a greater confidence than the gentlemen who are being nominated on this ballot.

I would like to know how many of you know the entire nine gentlemen that have been nominated on this here ballot, and what assurance are we going to get that we are going to fare any better than we have been faring up until now, whereby the funds of this corporation will not be squandered, as they have been squandered before. You have been here now about forty-five minutes within which to organize yourselves, and those of you that are not in any combination, or not in any way connected with this here printed literature, I ask that we hold ourselves a little caucus on the outside, as independents, and nominate a board of directors that will serve you and preserve the remainder of the assets of this corporation. We do not need geniuses to run the affairs of a corporation that has some assets; all we want are men who are capable and who are honest. With all due respect to the gentlemen that have been nominated, I don't know, but past experience has shown, with the little knowledge I have gained

through this literature that has been sent out in the last two years—shows me and compels me to be so disappointed, that when I read the last certain piece of literature sent out, that a certain gentleman has seventy thousand dollars for certain services in connection with the company, and finally at the last some little literature was sent out and it was accepted, whoever—by the chairman or whatever board of directors there are—reduced to thirty-five thousand dollars —less than a year since he has been acting in trying to serve the company.

If you ladies and gentlemen that feel like I do about this matter, if you wish to retire to a corner, we can nominate, probably, our own board of directors, that haven't got the money or the influence to put out this literature here.

That is all I wish to say.

Mr. Augenblick: May I ask if the one hundred and seventy-two thousand shares, that was formerly held by Mr. Markley, the trustee, is represented at this meeting tonight?

Master: Is anyone prepared to answer?

Mr. Glauberman: Mr. Markley informed us that he is going to be here tonight.

Mr. Fitzsimmons: Do we consider his resignation?

Mr. Glauberman: I don't know, but—

Master: I don't think any of that is a matter with which this meeting need give itself any concern. I shall deal with these matters when I make a return to the Court of Chancery, which will deal with these matters as the Court of Chancery. This, you see, is held under the direction of the Court, so that we are not concerned with that at the present time.

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Mr. Glauberman: I have a number of signatures here, signifying a revocation of some of the same proxies that you have in your possession, and I would like to file them.

Mr. Quint: Ladies and Gentlemen: Having heard the previous speaker, I want to tell you that it puts the directors—I am one of the directors—in a rather embarrassing position. Apparently, judging from the remarks of the previous speaker, he wanted to know who these directors are, and he insinuated by his remarks, that we were not properly constituted.

I want to tell you at the outset, that if the gentlemen was present at the meeting held in January, he must know that it was a stockholders' meeting, and the stockholders elected these directors.

Personally I didn't care to act on this board, because I happen to be a very busy man and have my own interests to look after. I happen to—my brother and I happen to own a substantial part of this stock, and among my friends and associates I will say we have a total of about six thousand shares. My own money is in this company. When I finally agreed to accept a position on this Board of Directors, I did it only with one purpose in mind, and that was to try and conserve the assets of this company for my stockholders and myself.

Since we have been elected, I want to tell you that this has been a labor of love. We have been working on this thing for many months now. Our position from the outset has been that this company is not a bankrupt company, and does not belong in the hands of a receiver. We ask, Ladies and Gentlemen, we ask that this com-

pany be returned to its stockholders. We feel that if the stockholders come into possession of this company, that we can rehabilitate this company and make something out of it.

Let me answer this gentleman's question.

He wants to know who are this Board of Directors. Who are these men? He insinuates that we are self-constituted. As I said at the outset, we are not self-constituted. We were elected by the stockholders. Now, if he wants to know who we are individually, I will tell him.

Mr. Roscoe L. Strickland, whom we have elected our president, is a man that is very, very well known, a man that has a splendid reputation, and everybody who knows him, knows that he is one hundred per cent.; and I want to tell you, also, that he has a very substantial stockholding of his own in this company.

Mr. Christie is one of the officers of the Woolworth Company. He owns about seventeen hundred shares.

Mr. Samuel Silberstein, also, one of the Board of Directors, owns four thousand shares.

Hyman Kramer is in the wholesale lumber business, and as I understand it, a very prominent and very eminent merchant.

Mr. Samuel Kappel I think must be very well known to all of you, and he has a very large and substantial interest. Mr. Kappel owns fifteen stores in the Greater New York—the Howard Clothes Shops; a man who does a tremendous business, and very responsible.

Mr. Charles J. Ryan is with the Andes Petroleum Company.

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Mr. Samuel Kipnis is with the National Container Company, and very responsible, and does a very big business, and he and his wife together own about thirty-five hundred shares.

Mr. Joseph Socolof is in the wholesale grocery business.

That will tell this gentleman who we are.

I want to say further, when I said this job was a labor of love, that is all it is. I have been to twenty meetings. Some of those meetings lasted until midnight. For what? Just for one purpose—to conserve the assets of this company.

I may say to you, ladies and gentlemen, at the outset, when the receiver took possession of this company, he sent out a circular. In that circular he announced that—and I believe that most of you got that circular and will remember it, if I bring it to your mind or recollection—that he said that Price, Waterhouse & Co. have made an analysis of your company, and the company had a book value of ten dollars and fifty cents a share, and he said, "Don't sell it; it is valuable; hold onto it; don't throw it away;" and what happened to that company? Do any of you believe today, with the receivership administration, that that stock is worth ten dollars and fifty cents a share today? It isn't. I may say that it does not speak most highly of the ability of the present receivership. I believe that that company should be returned to its stockholders. Personally I don't care a tinker's damn whether you elect me or not. I would just as soon resign tonight, and say "Thank you," because, as I told you, it has simply been a labor of love. That is all. We want to bring this company back and make it worth something for ourselves and something to you, and if you believe in us and you

stay with us, and if we get this company back, we think we can rehabilitate it and make something of it. We have been offered several opportunities of merging with some first class companies—

Stockholder: What are they?

Mr. Quint: I cannot say that. The company has not been returned to this board of directors, and consequently we are in no position to accept any proposition made by anybody, so what they are doesn't make any difference.

Let me say one more word. Somebody said to me the other day, "What are you fellows getting out of this thing?" I will tell you what we get out of it. The other day we wanted to send out some letters to our stockholders, and we didn't have enough money to buy the stamps, so each of us chipped in and we each gave one hundred dollars in cash so we had enough money for stamps. That is all we got out of it.

Stockholder: If a board of directors is elected, will the receivership be terminated?

Mr. Quint: That will depend on the Court.

Stockholder: Do you think it will be done?

Mr. Quint: I cannot say that.

Mr. Glauberman: Mr. Chairman, Ladies and Gentlemen: The question was raised whether the receivership will be terminated. I do not propose to speak for the Court, but I can tell you the experience we had since December, since we are on the case. December 17 an order to show cause was sent to all the stockholders, asking them to show cause why they should not receive one dollar and fifty cents liquidating dividend, and why a temporary allowance to the receivers should not be made. At that time a stockholders' committee was organized, and they asked me to rep-

resent them in court. I appeared for them on December 17, and I objected to the liquidation and I objected to the temporary allowance, and I asked the Court's permission to call a meeting of stockholders, at our own expense. We called a meeting. Before we called the meeting, we asked each stockholder to nominate different people. They finally nominated about twenty people, and then at the stockholders' meeting they voted for nine, and after the nine were elected, I filed a petition with the Court asking them to terminate the receivership, because this company had about a million dollars in cash, and only owed about sixty thousand dollars. I think that the receiverships are costly and expensive propositions to the stockholders, and the longer it lasts, the more expensive it will be. After several arguments the Court stated he wanted to know how all the stockholders felt about it, and we sent out a postal card—most all of you received it—how we should vote; whether we want this board or whether we want cash, or whether we want a new board. The majority of those voting, voted in favor of this board. Then the Vice-Chancellor, in open court, after listening to several directors, finding out, for instance, as I did, I asked every director after he was elected, who he is, what interest he has in this company, whether he knows any other director, whether he knows any Harry H. Weinberger, or whether he had any interests with him, or any connection with any member of the previous board. Let me tell you the result of my analysis. All of them—none of them knew each other before they were elected. It was a good sign, as far as I was concerned, because it was quite a responsibility for me to represent

them. It showed there could be no conspiracy beforehand.

Two of the directors — one, Mr. Silberstein, who, I understand, has invested about seventy thousand dollars in this company, told me that he is a personal friend of Harry H. Weinberger, but, he said, "I am going on this board for my own interest. I have sunk seventy thousand dollars in this company." Another gentleman by the name of Mr. Hyman Kramer, said, "I have known Harry H. Weinberger for a long time. My family and I have about two thousand or twenty-five hundred shares, and I will sit there and see that my interests are protected." Another man stated that the only dealings he had with Weinberger, he sold him something. The rest never knew Weinberger except as they met him in court once or twice. I reported to the Vice-Chancellor, who said, if I can recall the exact language, that he is rather impressed with this board, because they seem to be men who are financially interested in this company. They are not just bankers or lending their name, who may or may not come to a meeting, but they sunk their money, and they are going to watch it. And he said, "I would turn over the company to them, but I find a certain technical difficulty; a question has been raised as to the legality of their election."

Let me give you that. In order to call a meeting of ten thousand stockholders, it is impossible to get them to come, so we sent out a proxy; there were four members on the committee. I personally never met those gentlemen—two or three of them I met; in fact, they retained me to appear for them at a meeting. We find this: That one man did not show up. One man got up and stated, because Mr. Weinberger had been invited

once to a conference to see whether we can settle the affairs of this company, he felt that this is a Weinberger affair, and he therefore resigned. You cannot hold a man if he says he wants to resign. Two voting. My contention was, that one resigned, there were left three; two out of three are a majority. The Court felt that two out of four is not a majority. And there was asked whether an election could be held to overcome that. That is why we have expended a fortune of money to call this meeting together tonight. That is its only purpose. If there are no obstructions, if the stockholders are willing to terminate this receivership, I suggest let the directorship come in.

Let me give you another suggestion. This board is only elected until September. This board can do nothing to the detriment of this company. They can make no decision in any way, either to dissolve or sell the stock, without some stockholder being able to go into court and stop it. And these people who have sunk their money in that company, in order to protect themselves have to protect you. That seems to be obvious. All of them, with the exception of one man, has large holdings in this company. That gentleman is Mr. Charles Ryan, who was secretary of the stockholders' protective committee, who we felt should be on the board, because at that time he represented in proxies about thirty-odd thousand shares. The man who represented a small number of stockholders—there were also propositions by different people who want to get hold of this company—this board, I told them that we cannot deal with any proposition until the receivership is terminated. That is the first thing. And then, if it is every stockholder's

wish, we will call a meeting and let the stockholders vote.

I want you to know this: these men, as far as I could be convinced, and I have been to them practically every week in one or two meetings—only yesterday I called them together, at nine o'clock in the morning, in this hotel, and I know their only purpose is to save this company. That is their purpose.

Stockholder: How do they intend to do it?

Mr. Glauberman: If you have a fire, the first thing to do is to put out the fire. We feel that this company is burning up while being in the court, and I will tell you why. These receivers are high class men; their counsel are high class counsel; the longer they keep the company, and they bother with it and have to be paid.

Stockholder: What do you intend to do after you are elected? That is what we are interested in.

Mr. Glauberman: The same question came up, and the answer was this: they will do with this just as they would do with their own money. If it is a question of buying information and hiring expert men, we will hire them. Suppose you had a million dollars, you would go to high class men and pay them for their opinion. That is what these men expect to do. They will do nothing which will be detrimental to this company. That is what these gentlemen expect to do, and I think it was Mr. Quint, before he was elected, said, if he finds that the board cannot run this company, the board will send out a letter to the stockholders and say "Come together and let us liquidate."

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Rose Lemerstein: I cannot understand why we invested the money and lost practically most of it. Why should we let you go ahead now and get a high priced man and invest for us? Why should we not all take the little that we can salvage? I don't see why we should entrust men who are all reliable men. Why should you invest my couple of dollars?

Colonel Thomas E. Fitzsimmons: Ladies and Gentlemen: You will remember that during the past two or three weeks, you received a letter signed "Thomas E. Fitzsimmons," in which I stated my interests in this company as a stockholder and what I tried to do for it. Several weeks ago the Court stated from the bench, that the salvation of this company would be the obtaining of a leading banker with a group of bankers to run it, with no axes to grind, and without any previous connection with the other directors of this company. Mr. Stamler in court mentioned one man's name, who was one of the leading bankers of the state, Frank Ferguson, a former collector of internal revenue, former bank examiner, and president of one of the biggest banks in the state. I happened to go on his board a short time after that, and I sold him this proposition, and told him that he wouldn't get anything out of it, except abuse, if he didn't make good; and if he did make good, he would be one of the biggest men in the state, and pull this company out of its present status. He thought the matter over and told me that he would form a board of prominent bankers of this state, who would endeavor to invest this money and use it as it should be used. That could not be arranged,

because Mr. Ferguson refused to give those names to submit, unless they would be assured of election, and that would mean, of course, that the vote which Mr. Markley held in trust, 172,000 shares, which is practically working control of this company, should be used for that board. We found that we couldn't get any cooperation, and spoke to Mr. Weinberger about it. He told me he would go along on terms, and those terms were, the cancellation of his obligation, the release of the guarantors on that note, and the return, as I remember it, of the thousand shares of Hobart Service, and I walked away.

I then determined that I would make a fight as a stockholder, against the voting of that 172,000 shares of stock, on the ground that it was inequitable to permit that big block of stock, which has not been paid for—it was estimated, when that agreement was made between Mr. Weinberger and the company, that he owed the company two and one-half million dollars, and he agreed to buy one hundred and seventy-two thousand shares of stock for two and one-half million dollars, and pay two hundred thousand dollars cash, and a note for the balance. He put up certain security, which included these one hundred and seventy-two thousand shares, which is now down to about two dollars, and so as a result of this litigation, Mr. Markley yesterday resigned. I appeared before the Court of Errors in Trenton to get a stay pending appeal from Vice-Chancellor Backes' decision, to prevent that stock from being voted at any time. I didn't know what Mr. Markley's intentions were, and a lot

of things happened with this company, and he might revoke that resignation and walk in here tonight and vote it. As a result of this appearance before the Court today, his partner got up before the Court of Errors and Appeals, in answer to a question by Chief Justice Gummere, as to what Mr. Markley would do, he said, "He will abide by his resignation, and he will not revoke it; he will not vote at this meeting tonight." A picture has been presented about these men. I don't know these men, except that I do know that all of them are friends of Mr. Weinberger. I took the position, why should any friends of Mr. Weinberger be on this board. We had one experience with them. Leaving aside all the acumen of this fight, let us see how the thing sizes up: The company has about two million dollars' worth of liquid assets. The company has a note of Mr. Weinberger of two million three hundred thousand dollars; the quarterly interest on it comes due on June 4. Mr. Weinberger has been very active for this board. He appeared in court last Tuesday before Vice-Chancellor Backes, and he said that Fitzsimmons is trying to cancel this agreement, and he felt that what I was doing would be to his benefit; that he would get his money back. If that were true, would he appear before the Court of Chancery, and would he appear down in Trenton today and argue for himself, to allow these 172,000 shares to be voted? He has been too active. I say the receivership has continued some time. Every three months twelve thousand dollars must be produced approximately as interest. In a short time that will pay the expense of your receivership. If that money is not paid,

then the security will be sold to satisfy it. A year from October the whole debt must be met. Several of these guarantors are good. Some of the other collateral probably is good. Wouldn't it be better to pay the receivers up to date; let the matter rest? They will be only custodial receivers from now on. Keep that money which is invested; the lowest is four per cent., and they will get as high as six per cent.—than to take a chance on having someone come in—some board, perhaps, inexperienced in the line, and the same thing may happen as before—into the Court of Chancery again!

As a result of that, I have taken the position, people have given me proxies to represent them at this meeting, but I will refuse to vote them. It cannot be made a legal meeting without these proxies and without the 172,000 votes of Mr. Markley. I think it is going to be for the best interest of the stockholders of this company, to have it take that course.

(Applause.)

Mr. Glauberman: May I note on the record that Mr. Markley, the trustee for Mr. Weinberger, who holds 172,034 shares as of record twenty days prior to the meeting, is present now at the meeting, and therefore we have additional here over 200,000 shares; therefore, there is a legal meeting now.

(Applause.)

Furthermore, I wish to note on the record, that I noticed that Harry Weinberger, the cestui que trust under that agreement, is also present.

Master: Before we have any more oratory, may I announce to the many who came in late,

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that we are proceeding to hold a meeting pursuant to the direction of the Court of Chancery, for the purpose of electing directors of the New Jersey Bankers. The polls were declared open at twenty-five minutes of eight, and will close in substantially twenty-three minutes now.

In order to avoid confusion, I will ask at this time those who are here in person, and who desire to vote, if they will proceed to come up to the rostrum and cast their votes, giving their names and addresses and the number of shares in each case. Are there any here who personally desire to vote? You still have a few minutes. Are there any here who executed proxies or who desire to vote?

Mr. Quint: Those who have executed proxies and are here tonight, it is not necessary to vote and have the proxies vote.

Master: It is not and they cannot do both. and they are violating the order of the Court of Chancery if anyone under any circumstances attempts it.

Mr. Snyder: I have received three different styles of proxies here, and we have here from two sources. I would like to know, are there any representatives by the name of Staley, Louden or London here, and state their side on this particular question.

Mr. Augenblick: I represent that committee, and if the meeting isn't closed yet, and there is still time for some discussion—

Master: The meeting is not closed; there is ample time for discussion. I didn't desire to cut anyone short, but I don't want to be in the position where when we have a moment or two left for balloting—

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Mr. Augenblick: I will only take a few moments.

This young lady here on my left a few moments ago asked a question, why it was necessary for this so-called constituted board of directors to handle the money of all the stockholders. Why can't each stockholder handle his own money and invest the money as he or she sees fit? I thought it was a very proper question for this meeting. Why cannot every stockholder in this company have the election or exercise his discretion, whether or not this so-called board of directors, or another board of directors, shall handle his or her money; or shall she or he handle his own money?

So far you have only been confronted with the proposition where this so-called constituted board of directors are going to handle your money, and they are going to attempt to make more money with it. Their attempt may be successful, and their attempt may be unsuccessful. Why should we stockholders have only one alternative, and put our rights and our money into the power of this committee? That thought has always been in my mind, and it is for that reason that the so-called stockholders' committee, of which Mr. Louden is the secretary, and of which Mr. Frank is a member, had sent out to all the stockholders of this company a so-called plan, involving the Empire Corporation; and it is this plan, ladies and gentlemen, that will give you the alternative, to take either three dollars in cash for your stock, or, if that is not satisfactory to you, if you are not satisfied with the three dollars in cash, you can take that three dollars and invest it with this

Empire Corporation, whose stock is listed on the New York Curb Exchange.

Stockholder: What price, please?

Mr. Augenblick: $28 a share or $29 a share. Will you help me out on that?

Stockholder: $28.50.

Stockholder: How many would you get?

Mr. Augenblick: Nine to one, at three dollars a share.

Stockholder: You want us—

Mr. Augenblick: I would rather not be interrupted by these gentlemen.

Master: Mr. Augenblick has the floor.

Stockholder: Four dollars a share has been offered.

Mr. Augenblick: I have never yet heard a single proposition where anyone has offered four dollars a share to any of the stockholders of this company. If there is such a proposition you can have all my stock, and you can have all of the stock of the committee. This is the first time that has come to my attention, that four dollars a share in cash has been offered to anybody in this company. If the gentleman who has offered four dollars a share will come up to the front and make his offer to this gathering, I will guarantee to him fifty, sixty or seventy thousand shares of this company.

Master: We are considering the matter of the election of directors and not holding an auction here. I think it would be well if we could proceed with the election.

Mr. Fraad: I would like to get information. The 172,000 shares are held here and are sup-

posed to be for Weinberger, although not to vote. Are they going to vote?

Mr. Glauberman: May I answer that?

Master: I don't know that that is of any concern here at the present time. I shall on or before the twenty-third of April make a report of all that happens here, to the Court of Chancery. The Court of Chancery will then determine. I don't, of course, know whether it is here, and I won't until the ballot is closed.

Mr. Fraad: Why I ask—if those 172,000 votes are going to vote, all our votes absolutely mean nothing. It is going to be as it was, Weinberger's company.

Stockholder: I would like to make a motion that Mr. Augenblick be not stopped from talking,

Master: Mr. Augenblick was not stopped from talking, and he is invited to talk just as fully and as long as he pleases, but we would get along a great deal faster, if we confined ourselves to matters which concern the election of directors. Mr. Augenblick so understood it.

Mr. Markley: I wish to state for the record that I am here and am not voting 172,000 and odd shares. I have voted one hundred shares that I own in my own right, but the 172,000 and odd, which I hold as trustee, I am not voting, for the reason that I have already resigned the right to vote.

Mr. Augenblick: I move that the Chairman orders this meeting adjourned until a substituted trustee is elected for Mr. Markley, so that the shares in his possession will have a voice in the meeting of this company.

(Motion seconded.)

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Master: The suggestion of Mr. Augenblick will be noted on the record. Proceed with the meeting.

Mr. Glauberman: May I state—

Master: Please be brief. You have done your share of talking.

Mr. Glauberman: May I state for the purpose of the record, that Mr. Markley sent in his resignation two days ago. Mr. Markley is a holder of record of the stock as of March 27, which is the record date of voting. I may also state that the contract between Harry Weinberger and the company provides that Mr. Markley can only resign upon notice to the board of directors. That notice was never sent to the board of directors, and until a board of directors is elected, he cannot, under the contract, resign. Furthermore, the board of directors never received his notice. May I also state, that irrespective of whether he resigned or not, as long as he was a holder of record as of March 27, that settles the question of the quorum of this meeting.

Mr. Ludlow: I just want to reply a little bit to Mr. Fitzsimmons, who was on the floor here. Mr. Fitzsimmons is one that appeared in Vice-Chancellor Backes' court, and was in favor, when we were trying to save money for the stockholders, when the receivers and their counsel prayed, as they do in the petition, for $25,000 apiece for about three months' work. He was one of them that was in favor of it. Is that saving money for the stockholders? I only want to put that before the crowd. That amount has been raised to $35,000.

Mr. Fitzsimmons: I take exception to that. These men have worked longer than three months.

They were appointed last July. When I appeared in favor of the $25,000 fees, I had in mind that John Stamler—

Master: I am wondering if we cannot dispose of this by saying that the matter of the fees of the officers of the court will have to be disposed of by the Court, and isn't a matter with which this meeting can be concerned.

Mr. Fitzsimmons: Testimony is to be taken. I would like to note an objection on the record.

Master: The receivers are not asking anybody to justify their fees. They have got to have them allowed by the Court.

Mr. Fitzsimmons: I don't object to that. I want to enter a protest on the record to any proxy presented here tonight being counted, unless the same is dated, in accordance with paragraph 8 of the By-Laws of the New Jersey Bankers Securities Company.

Master: I am familiar with that by-law, and I was about to ask if any who are present, have signed proxies which are not dated. I shall in any event make a special report of those to the Court, but if any are present here who desire to date a proxy, they may have the opportunity.

Mrs. Schiller: I wanted to ask is it necessary that all the money is to be controlled by one company? Can't that money be assigned to certain shares to each person? If the money is all invested and is well invested, why can't every one get some shares assigned, instead of having it always controlled by the company, making so much expense, and the people losing all their money?

Mr. Von Sternberg: A point of information I want is this: I understand that 172,000 shares

have never been paid for, so they have no standing in this meeting.

Master: I don't know that we are concerned with it. You did hear the gentleman who holds them, state he would not vote them. He has announced that he does not intend to vote them.

Mr. Shaw: I cannot leave the opportunity go by to pick up where this gentleman left off. There might be some design in his reminder that the proxies won't be valid unless they are dated. Was there any design in having these printed without any space for a date? There are some people who are unacquainted with these little legal technicalities. It might be possible to waive that, provided that the proxies in the possession of the tellers are handed out this moment, and not tomorrow morning. They are witnessed. If there is a technical objection, it might be only by design the date was left off. Where is the sign trick?

Master: Mr. Glauberman, do you want to answer?

Mr. Glauberman: This proxy was sent out at the expense of the board of directors. It was paid for by the company at the Court's order. Every proxy has a number; it went out within ten days prior to this meeting—ten days ago. Every man that received a proxy has a number which corresponds with the number on the list. It seems the printer left off the date by accident. There was no purpose or design, and tonight about one hundred thousand proxies were signed and dated.

Master: I think you can well assume Mr. Glauberman wouldn't have had those proxies go out without a date designedly. I think we can

assume that it was an honest mistake, in any event.

Mr. Shaw: I handed in about a thousand of them.

Master: I will make a special report to the Court of those proxies which are undated.

Mr. Augenblick: The stockholders' committee headed by Mr. Frank Hughes had intended to apply today or yesterday to present a board of directors in nomination for the stockholders of this company. They ascertained yesterday from one of the receivers that Mr. Markley had resigned his trusteeship, and they concluded that no meeting would be held tonight, and that if a meeting was called, it would be adjourned by the Chair, so that a substituted trustee would be elected, or nominated, or appointed—I don't know what the procedure would be—in Mr. Markley's place. We come here tonight and we find that it is true that Mr. Markley has resigned, and we also find that the Chair has ruled that the meeting is to proceed, although the representation of the stockholders is not in accordance with the By-Laws of the company. This committee, headed by Mr. Frank Hughes, who has nearly one hundred thousand shares—proxies for nearly one hundred thousand shares — can ask the Court—the Chair that this meeting be adjourned until such time as a substituted trustee is elected for Mr. Markley, and until such time as a proper ruling is obtained from the Vice-Chancellor, whether or not this meeting should be conducted in accordance with the By-Laws of the company, or in accordance with some rules formulated by the Court of Chancery, or by the chairman of this meeting. I think there is grave doubt as to the legality of this meeting, especially after Mr.

Markley's resignation, and especially when the question is raised whether or not a majority of the stock is represented at this meeting. And as I said before, we have had no opportunity to present our board in nomination. There are a great many stockholders of this company who would like to either get their three dollars a share, or invest in some other company. They have not had their opportunity to express a voice at this meeting. A lot of them stayed away because they were not sure a meeting would be held on account of Mr. Markley's resignation; and I think for all these reasons, the fair and equitable thing for the Chair to do would be to adjourn this meeting until all these legal entanglements are straightened out.

Master: Mr. Augenblick, your objections and your statements will be noted on the record, and I would suggest that you repeat it to the Court of Chancery on the twenty-third of April.

Mr. Glauberman: May I note on the record that the proxies consisting of Mr. Strickland and Mr. Kramer, filed with the Chair, while the proxies of the other groups — those statements were made, they represent one hundred thousand —were not filed, and unless they are filed, I believe the remarks should be disregarded; whether they represented one hundred thousand or one hundred, we do not know, unless the Chair will have the pleasure to check them up.

Mr. Grossman: I. M. Grossman, two hundred shares, and proxies for five thousand shares, which are in there (indicating). I don't know that gentleman that spoke before, but I do take absolute issue with him. I don't believe that any man that says he has one hundred shares wouldn't come up and show them for the pur-

pose of making a real record. A man makes a lot of statements, and he is trying to befog the issue, and he is representing someone, and I want to bring that home to the people who come from all parts of the country.

Master: Didn't you get the announcement of the Chair? It was certainly made quite clear. I cannot see any reason for any possible misunderstanding. The meeting is proceeding. Each and every person here who desires to vote now, has the opportunity, but I will promise you that you have only three minutes more of the opportunity, as the poll will close in three minutes, and I ask anyone who desires to vote, to proceed to do so. There will be no confusion here.

The meeting will remain in order, please.

Mr. Stein: I represent two thousand shares, and I have proxies here, and as a protest against the election of any board of directors, I will refuse to vote.

Master: Any gentleman here who desires to vote? The polls are about to close.

Stockholder: I move the polls be closed.

Master: The polls are closed at twenty minutes of nine.

I am asking if all have voted who desire to vote. I hear no one present announce that he or she desires to vote.

Mr. Augenblick: May I ask the Chair a question?

Master: You may ask the question. I am not sure the Chair can answer.

Mr. Augenblick: I want to know whether or not the Chair has taken a poll of the amount of stock that is represented at this meeting.

Exhibit D. 2 of May 15, 1930.

Master: I have it, but I have not completed the tabulation, and it will be a long time before I do, but I promise you that I will continue it until it is done.

Mr. Augenblick: Is it the Chairman's intention that the proxies that are filed with the Chair tonight is all the stock that is represented at this meeing?

Master: There are several votes that have been cast personally, and the proxies that are here—in other words, I shall receive no further proxies, if that is your inquiry.

Mr. Augenblick: That is what I mean.

Master: Absolutely.

Once more, I will ask if there is any stockholder present here, who has not voted in person or by proxy. If so, this is his opportunity.

Stockholder: Mr. Markley has not voted.

Master: I asked if there was anyone here who wished to vote. I hear no reply.

Mr. Glauberman: I want to note on the record that there are many who did not vote here.

Master: What is the use of noting that?

Mr. Glauberman: For the purpose of a quorum. I wanted to note that Mr. Markley, who I stated had 172,000 shares, is present, but not voting; and Mr. Augenblick, who said he had one hundred thousand shares, refuses to vote.

Mr. Augenblick: That is not so, and do not note that on the record.

Stockholder: Mr. Augenblick said he controlled one hundred thousand proxies.

Master: If there is anything further that has to do with the election of directors, I will be

glad to hear it. If not, the meeting will be adjourned.

The meeting is adjourned.

Stockholder: I move we extend a vote of thanks to the Chairman for the very proper manner in which he conducted the meeting.

EXHIBIT D. 7.

COLLINS & CORBIN
Counsellors at Law

1 Exchange Place,
Jersey City, N. J.
April 15, 1930.

Board of Directors New Jersey Bankers Securities Company,
60 Park Place,
Newark, N. J.

Dear Sirs:

By virtue of an agreement between the New Jersey Bankers Securities Company and Harry H. Weinberger, authorized by the Board of Directors of the New Jersey Bankers Securities Company in August, 1928, which later was approved by the Court of Chancery in the case of Fannie Mayer vs. New Jersey Bankers Securities Company, I am authorized to vote 172,034 shares of the stock of your company which stands in my name on the books of said company, and is deposited with your company as collateral security for the note dated October 4, 1928 of Harry H. Weinberger for $2,300,000. Under said agreement I have the right to vote said stock for the best interests of said New Jersey Bankers

Exhibit D. 7 of May 15, 1930.

Securities Company. Also under the terms of said agreement it is provided,

> "In the event that said Edward A. Markley shall desire to be relieved from holding and voting the 172,034 shares, or any part thereof, if holding is reduced as herein provided, he shall have the right, upon notice in writing to the Board of Directors of this company (New Jersey Bankers Securities Company) to resign said right and the Board of Directors in that instance, together with me (Harry H. Weinberger) shall select a new person to hold and vote said stock in place of said Edward A. Markley, in accordance with the terms herein stated."

Since the appointment of Nicholas LaVecchia, Esq. and John J. Stamler, Esq., as Receivers of the New Jersey Bankers Securities Company by the Court of Chancery of New Jersey, I have been out of touch with its affairs. At least I have not been in close enough touch with its affairs to, in my opinion, vote said stock with a full understanding of all of the circumstances surrounding the company's affairs at this time.

I therefore, in accordance with the terms of said agreement hereinbefore quoted, resign my right to hold and vote said 172,034 shares. This resignation shall take effect immediately.

I am sending copies of this resignation not only to the New Jersey Bankers Securities Company but also to Hon. John H. Backes and Harry H. Weinberger, Esq.

Very truly yours,

EDWARD A. MARKLEY.

EAM:M

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ORDER TO SHOW CAUSE WHY STATUTORY RECEIVERS SHOULD NOT BE APPOINTED.

In Chancery of New Jersey

74/351.

(Suit No. 2)

Between	*On Bill, &c.*
SOLOMON BERNSTEIN, *Complainant,*	*Order to Show Cause why Statutory Receivers should not be Appointed.*
and	
NEW JERSEY BANKERS SECURITIES Co., a corporation, *Defendant.*	

Complainant having filed his bill of complaint on July 25, 1929, praying for the appointment of a receiver, in accordance with the General Corporation Act of the State of New Jersey, and this Court having then allowed an order to show cause requiring the defendant company to show cause why the said prayer of the complainant should not be granted and a receiver of the defendant company appointed, of which order to show cause due notice was given to the defendant company, after which the matter was summarily heard by the Chancellor upon oral proofs and the submission of exhibits, the defendant appearing by counsel and resisting complainant's application; and the Court having considered the proofs adduced and the arguments of counsel for the respective parties and finding the fact to be that the defendant's business then was and theretofore had been conducted

at a great loss and greatly prejudicial to the interests of its stockholders, so that its business could not be conducted with safety to the public and advantage to the stockholders, and finding further that the said company was without a board of directors to carry on its business and functions, and the Court, being also of the further opinion that it might be for the best interests of the defendant company that the Statutory Receiver warranted by the Court's said findings of fact should not at that time be appointed but that Receivers in Equity should then be appointed to serve, as such, until the further order of this Court, and that the appointment of a Statutory Receiver should be deferred and reserved until further application therefor, did, by order entered on August 8, 1929, appoint John J. Stamler and Nicholas LaVecchia Equity Receivers of the defendant company and of its property and did confer upon them the powers in said order particularly expressed, in and by which order it was, amongst other things, ordered and reserved as follows:

> "And it is further ordered that it is reserved to add to the foot of this decree that the defendant corporation and its officers and agents be restrained and enjoined from exercising any of its privileges or franchises and to appoint a receiver or receivers with powers granted by the 'act concerning corporations' 1896, and the several supplements and amendments thereto."

And the solicitors for the complainant now applying to this Court for an order to restrain and enjoin the defendant corporation and its officers and agents from exercising any of its privileges or franchises and to appoint a receiver or re-

ceivers with powers granted by the "Act Concerning Corporations" 1896 and the several supplements and amendments thereto:

It is, on this 29th day of April, 1930, by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, ORDERED, that the defendant company and its stockholders and creditors show cause before the Chancellor at Chancery Chambers, Newark, N. J., on Tuesday, the 13th day of May, 1930, at 10 o'clock in the forenoon, or as soon thereafter as the matter can be heard, why complainant's said application should not be granted and why it should not be further ordered that the defendant corporation and its officers and agents be perpetually restrained and enjoined from exercising any of said company's privileges or franchises, and appointing a receiver or receivers with the powers granted by the "Act Concerning Corporations," 1896, and the several supplements and amendments thereto.

It is further ORDERED, that a copy of the within order to show cause (which may be certified by complainant's solicitors to be a true copy) shall be served within eight days from the date hereof upon Collins & Corbin, Esqs., solicitors for and of counsel with the defendant company, and within the same time mailed to each stockholder and creditor of the defendant company whose name appears upon the books of the company.

E. R. WALKER,

C.

Respectfully advised,

JOHN H. BACKES,

V.-C.

Order to Show Cause.

Note: True copies of foregoing order mailed to each creditor and stockholder (about 13,000 in all) on May 6, 1930. Also served on same day, on Collins & Corbin, solicitors for defendant. Proof of service and mailing made before Vice-Chancellor Backes on May 13, 1930, before hearing commenced.

Opening.

TESTIMONY.

IN CHANCERY OF NEW JERSEY.

May 13, 1930.

Between

SOLOMON BERNSTEIN,
Complainant,

and

NEW JERSEY BANKERS SECURITIES COMPANY,
Defendant.

Transcript of shorthand notes of testimony taken in the above-entitled matter before his Honor, John H. Backes, Vice-Chancellor, at the Chancery Chambers, in the City of Newark, New Jersey, in the presence of Messrs. Leber & Ruback (Mr. Ruback) for complainant, and Mr. Isadore Glauberman for defendant, and Mr. Harry H. Weinberger, *pro se.*

Mr. Ruback: Your Honor's order in the New Jersey Bankers Securities Company why the statutory receiver should not be appointed and permanent injunction issued has been served upon the company, the stockholders and creditors. I have proof of service and acknowledgment by the company itself and Collins & Corbin, its solicitors of record. Before proceeding with the complainant's application that your Honor now appoint the statutory receiver, I want to step aside. Mr. Corbin has asked leave to address your Honor on the subject of his further representing the defendant com-

pany. He wanted to do that at the very outset of the argument and with your leave I will sit down.

Mr. Corbin: Your Honor, we were retained to represent the company by the Board of Directors which was elected in September, 1928, and have represented the company during the pendency of that board. In July, 1929, all of the board resigned except two members. Since then, while we have been nominally attorneys of record for the company in this particular litigation, we have had no active client to go back to. In the other hand, the interests of the stockholders have been represented by other solicitors and counsel whom they have employed. We have followed the proceedings, but we are hardly in a position to make representation on one side or the other to the Court because we had no client that we could represent —no client that was active.

The Court: You have been unhorsed.

Mr. Corbin: We have been unhorsed and left with one foot in the stirrup.

The Court: You tried to keep it there.

Mr. Corbin: Well, we just sort of let it slide as it was. At the same time the president of the company has never resigned.

The Court: Who is that?

Mr. Corbin: Senator Edwards. I do not attempt to say what his status is, but I understand at the time that he designated other counsel to represent the company in connection with this matter. We are perfectly willing and offer to give substitution to anyone whom your Honor may suggest and I have a substitution drawn with that in view. I have put in a reservation

of our right to make an application for an allowance for the services already rendered, and I respectfully petition the Court to appoint other counsel in our place. We do not seem to be in a position to accomplish what should be done by counsel at the present time. Mr. Glauberman, I believe, wants to address the Court.

Mr. Glauberman: If your Honor please, on December 17th, I appeared before your Honor in behalf of the committee. Later Senator Edwards and Mr. Stafford, the only two directors remaining, held a meeting because I asked that the board should designate the date and place for holding a stockholders' meeting. There was a question in my mind under the by-laws whether we could hold a meeting outside of the office of the company, and at that meeting Senator Edwards asked me to represent the defendant company and the stockholders. I have an affidavit here from Senator Edwards setting forth that fact, and I would like to read it to your Honor (reading).

The Court: What date?

Mr. Glauberman: It was before January 16th. After that, on January 16th, an election was held and nine men were elected, and then at a meeting, I think on the 22nd or 23rd of January, I have an affidavit—the board then designated me as counsel for the company. Now, I am not here to try to say Mr. Corbin does not represent the company, but in view of the fact that Mr. Corbin feels, as I understand, that he has no client to represent, and in view of the fact that I was designated by Senator Edwards before the present board was elected,

and the present board having elected me, I rspectfully suggest that my appearance should be noted for the company.

Mr. Corbin: I understand you will make the order substituting?

The Court: When they tender it to me. I cannot select counsel for clients.

(Mr. Ruback opened for the complainant.)

Mr. Glauberman: On July 25th a bill of complaint was filed, asking the Court to appoint a statutory receiver, or a receiver. The order to show cause that your Honor signed was addressed, I believe, to the defendant company to show cause why the prayer should not be granted to the complainant, and then, your Honor, two hearings were held and testimony was taken very exhaustively, and then at the end your Honor stated that the testimony was closed. I want to call your Honor's attention to Section 65 of the Corporation Act (reading). Your Honor then, after listening to argument and testimony, found as fact that the complainant had proven its case under the statute and decided that your Honor was warranted in appointing a statutory receiver, but your Honor stated at that time that you felt that only an equity receiver should be appoined, for very obvious reasons, and your Honor observed—(reading). In other words, if I understand this order correctly, your Honor, that you could appoint a statutory receiver because you stated so, but for yourself you reserved the right to change it and not permit the stockholders to come in and say why the receiver should not be appointed because under Section 65 it says (reading). There is another thing in this case,

if your Honor please. The purpose of the summary hearing is obvious. Here is a corporation losing money or is insolvent—it is in danger. The statute gives the privilege to stockholders to come in and say: "We do not want to wait for final hearing. We want the Court immediately to hear the testimony." That was this case, July 25, 1929, that the bill was filed and you heard testimony and now it is May 13, 1930.

The Court: What are you getting at? Tell me what your point is.

Mr. Glauberman: By way of introduction I want to show my position. After the appointment of the equity receiver, an order to show cause was issued why a liquidating dividend should not be made and why counsel should not be paid a fee. That order was never disposed of. Subsequently an election was held and we claim there is a board of directors in existence. Then on April 23rd the defendant company gave notice of appeal to the solicitors of the complainant appealing from the order of August 8th, deposited $100, and it is our contention that the Court at the close of the hearing, closing of the testimony cannot reopen the case. It is not a rehearing, new testimony, because it is in the same old bill of complaint filed and we claim it is a matter of *res adjudicata* as far as this order is concerned. Our only remedy is the Court of Errors and Appeals. We cannot come to this Court and ask for argument on matters nine months old. And I would like now to insert a special appearance on behalf of the New Jersey Bankers Securities Company to this

proceeding and I would like to read my reasons for the special appearance.

The Court: You are already in generally. You may put your reasons on record, but I decline to permit you to appear specially.

Mr. Glauberman: May I file this?

The Court: You may.

Mr. Glauberman: Now, if your Honor please, I want to call attention to another thing in this matter. There are two orders to show cause out; one obtainable, I believe, on February 4th why the receivership should not be terminated; another one obtained March 26th and sent to all the stockholders why the receivership should not be terminated and the company turned over to a board of directors. Your Honor has not disposed yet of those two matters. They were continued until today. I submit the only matter open to your Honor now is whether those petitions should be granted or not. That your Honor cannot now after nine months, summary hearing had upon August 1st or July 25th, 1929—it isn't fair to the defendant, nor to the complainant to be asked nine months later to come in and submit evidence of what happened a year ago. This is a summary proceeding. I therefore ask the Court to dismiss the orders to show cause, and insist upon argument on the order that is being continued today, why the receivership should not be terminated and the property turned back to its present board of directors.

I would like to call your Honor's attention to Vice-Chancellor Buchanan's opinion in the case. The Court said that there must be proof before the Court the

company is now being continued at a great loss and prejudicial to the interests of the company. On August 1st. We cannot be charged with what the receivers have done from July 25th until today. I therefore respectfully urge your Honor to dismiss the order to show cause now, first, because it is unnecessary, and secondly because the Court is without jurisdiction in view of the appeal from the findings of the Court.

The Court: The motion is denied. The appeal is not the supersedence of the present proceeding. Whatever may be done as a result of this hearing will not affect the subject matter of the decree that I made last July. I think I could at this time exercise the power I reserved in my decree of last July upon the testimony then before me. The stockholders had no hearing, had no voice in that hearing. I don't know that they have a legal right to have a voice. It may be. I am inclined to think that they are represented by the corporate body, but there was no corporate body except in name. But this present hearing, upon notice to all, can do no one harm. It is in the interest of all that I gave to those who care to object the right to be heard.

Mr. Weinberger: I would like to have my objection on the record. I am appearing here in response to a rule to show cause and I would like to be heard. Your Honor just stated this is a matter of giving the stockholders an opportunity and I would like to be heard. May I have it noted on the record that I desire now to make a motion with regard to the opening made by counsel before testimony is to be taken in this matter with regard to jurisdic-

tional factors which do not justify, in my opinion, the right to take testimony?

The Court: Do not argue your case. Put your objection on the record.

Mr. Weinberger: I have them in written form.

The Court: Put them in.

Mr. Weinberger: May I ask that they be filed?

The Court: Yes. Hand them to the reporter.

JOHN STAMLER, sworn for complainant.

Direct examination by Mr. Ruback.

Q Mr. Stamler, you are one of the receivers functioning in this matter for the New Jersey Bankers Securities Company? A Yes, sir.

Q At the time of your appointment in July, 1929, did you find that the company owned any shares of stock of the Lebanon National Bank of New York? A I did.

Q How many shares? A 2,564 shares.

Q Do you know what the company had paid for those shares? A $786,170.00.

Q When had those shares been bought? A Those shares were—there was a contract to purchase that particular block of stock in existence prior to July, 1928, upon which $50,000 was paid. While I was the president of that company I advised the board to rescind the contract on the ground that it was—(interrupted).

Mr. Glauberman: I object on the ground that the resolution is the best evidence.

The Court: Overruled. Go on.

The Witness: On the ground that it was made under a misrepresentation of—as to the value of the assets. We employed counsel in New York with that end in view, and as I was about to retire from the presidency—a few days before—an offer of settlement was made in this matter whereby we were to forego the $50,000 deposit and surrender the contract. That was about September 1, 1928, when I got out of the company. Subsequently that matter was reaffirmed by Mr. Weinberger and his board then—or, I beg pardon—by Mr. Weinberger. He was not on the board—by the new board, and paid for this sum of money.

Q What was the purchase price per share? A It amounted to $306.82. Now, when we got there July 29th, the very date of the appointment, I went over to New York City.

The Court: July 29th when?

The Witness: 1929. The day of our appointment as equity receiver—(interrupted).

Q You were appointed on July 25, 1929? A 25th. That was the same day. I went over to New York City and went over the condition of the bank. An examination was then in progress by the National Department, and it developed that the department wanted to close the bank on the ground that it was unsafe to operate it, not only to the stockholders but to the public generally. Losses were very—almost wiped out—the losses sustained wiped out more than the surplus paid in together with the undivided profit. The directors, together with Mr. Reeves and myself, sat there for hours discussing this matter pro and con.

Q Who was Mr. Reeves? A Mr. Reeves was then the chief national bank examiner, and there was also present the examiner in charge—and resulting that I agreed at that time on behalf of the receivers, in order to keep the bank open, to pay in $50,000 of the bankers' money—New Jersey Bankers Securities money and a Mr. Richmond who was a very large stockholder agreed to put in $10,000. That agreement was made subject, however, to the approval of the Court. The next morning I submitted the matter to the Vice-Chancellor who advised that the money be paid in in order to keep the bank open. From that time on we had difficulty with that bank constantly. Losses were continuing constantly and the department constantly threatening to close the bank. I had correspondence with the Comptroller of Currency; took a trip to Washington, assuring him that we would clean the matter up and put the bank in the hands of a group that could operate the institution if we could have sufficient time. Mr. Reeves likewise saw me a number of times with various assurances that we would clean up the situation. I personally made an agreement with the Federal Reserve Board of New York that no further loans were then to be made to the then existing board, so as not to endanger the assets, and no further loans were made to the Lebanon bank. All loans that were made to the bank in order to continue to exist were on its own bonds, and securities. But an end came to that. We had no more. So finally we sold the bonds in order to pay off the existing debts. Then it was a good market—a good bond market, and we paid off the existing debts. Finally we procured a purchaser for this bank—procured a purchaser for this bank and resulting after a great of trouble, negotiations and

orders and rules to show cause, the bank went back again into the hands of Mr. Mandur, who originally sold the bank to Mr. Weinberger, and it brought a little over a dollar a share net to us.

Q When, upon your appointment, you went to New York and acquainted yourself with the conditions of the Lebanon bank, whom did you find in practical control of that bank? A There was a man in charge who—I forget his name—who had an option.

Q McMahon? A McMahon, together with another gentleman had an option on this thing to buy at $350 a share. That is correct. It slipped my mind. The option was for a period of one year. Mr. McMahon was placed in charge of the bank as president. He had been in there about a week. To the great disturbance and annoyance of the Federal Reserve Board and the Comptroller's Department for the reason that Mr. McMahon was not considered by the Federal Reserve Bank or the Comptroller as well as the Chief National Bank Examiner as a sane and safe person to be in charge of an institution. He had had difficulties heretofore in banking. I went to see Reilly, is the name—Reilly is the man who had the option. I went to see Mr. Reilly and after four or five days looking for him we located him at 42nd street opposite the library there, near Fifth avenue. He had one room with a desk, no telephone and a girl there.

The Court: You mean a secretary?

The Witness: Well, a secretary. He was supposed to be a lawyer. I finally got in touch with him and I found out he had no means whatever to buy this bank or ever could obtain means to buy it with. Mr. Mc-

Mahon likewise had no means. As a matter of fact, the ten qualifying shares that were required by him under the statute in order to be president and a member of the board, were loaned to him and he couldn't afford to pay the $3,500—resulting that we gave notice and finally terminated that contract. There was to be a payment made of $50,000 within a week or two after we went into possession and that payment couldn't be made by these gentlemen at all—they didn't have the money. They finally admitted—Mr. Reilly admitted that he simply took this option with a hope that he might be able to find somebody some time who may be interested in the bank, but he had no personal means.

Q Who gave Mr. Reilly his option to purchase? A This New Jersey Bankers.

Q When? A This was shortly—possibly May or June, 1929.

Q Was Reilly in charge? A McMahon was in charge.

Q Was Reilly or McMahon in charge of the bank? A McMahon was in charge.

Q Had they put up any money? A Not a dollar. He was elected president. In order to get rid of Mr. McMahon we had to invoke the statutory provision which provides no member of the board can serve unless he has ten shares of stock fully paid for and unhypothecated. I produced the stock which was in Mr. McMahon's name, together with a note, and resulting that he then and there promptly had to resign.

Q Who handed this company over to him? A The New Jersey Bankers Securities Company.

Q Who? Under whose management? A Under the management after Mr. Jelin left—Jelin was out for about four or five weeks—after that.

Q After what? A After Jelin left. Four or five weeks after Jelin left.

Q Who was in charge? A Senator Edwards was then president of the company.

Q I mean, who was the active man? Senator Edwards? A They had none. Senator Edwards was supposed to be the active man. Of course, Mr. Weinberger did the trading.

Q What? A Mr. Harry Weinberger did the trading.

Q What do you mean, did the trading? A Well, he drafted the contract, the bringing about the sale. The bringing about the sale was with the knowledge and approval of Mr. Weinberger through a lawyer by the name of Wells, who represented the company at that time. He drew the contract.

Q What sale? A The proposed sale or, rather—(interrupted).

Q The option? A The option.

Q How long was Mr. McMahon in possession of that bank under that option? A About ten days.

Q And during that period, did he make any losses? A No; the examiners were there and the examiners wouldn't have left the bank under any circumstances until Mr. McMahon was out.

Q Were any loans granted by—at any time—by McMahon or anybody acting under him? A No loans was granted during the Mr. McMahon administration. Renewals were taken subject to the approval of the bank examiner who was then in the bank and watching it, Mr. French.

Q How long had the bank examiners been there? A They were there about three weeks, say, prior to the date I agreed with them to put in the $60,000. After we got there and put up the money the examiners left.

Q Now at the time of your appointment, did the company have any shares of stock in the Perth Amboy National bank?

The Court: Were you called upon at any time to put up money to save that bank?

The Witness: Yes, sir.

The Court: Later on?

The Witness: Yes, sir.

The Court: Did I give you an order to put up more money later on or am I mistaken?

The Witness: No; there was an order to be made; that was before the negotiation. We were to put up additional money.

The Court: Under pressure?

The Witness: From the department.

The Court: That was not done?

The Witness: No.

The Court: You were able to sell.

The Witness: Sell, subject to the arrangement and we put in finally our money, $60,000 additional, afterwards.

Q Mr. Stamler, did the company have any shares in the Perth Amboy National Bank? A We had 1,150.

Q How many shares were outstanding? A 2,000.

Q What did the New Jersey Bankers pay for that holding? A $250 a share.

Q And in what condition did you find that bank when you took possession? A The bank was frozen; a lot of bad loans; no supervision of management. And that was the difficulty with all the banks and the Bankers. Nobody supervised them. We had trouble there with the National Department the same way, resulting that we resold the bank to Mr. Van Syckle for $150 a share and I thought we made a very splendid sale there. We sustained a loss there of about $275,000 or $300,000.

Q Did you sell out at that price your entire holdings, 2,564 shares? A No; 1,150 shares, Perth Amboy.

Q I beg pardon. 1,150. A You see, you had to create a demand for that stock. It couldn't be sold—you had to appeal to the local pride in order to make a sale of this particular stock, to save the banks in the city and the—an appeal really to the local pride of the men that this bank could at all be sold.

Q It was bankrupt? A The bank was not insolvent, sir. The capital and surplus was there, if you worked three or four years to get it out.

Q Frozen, as you say? A And the assets were frozen. Even the deposits were frozen. But you would have to work a good many years to work it out.

Q Was the bank showing any operating profit? A No. The bank was losing money all the time.

Q Do you know how much? A I don't recall the figures now, sir. Lebanon Bank was losing at the rate of $5,000 a month.

Q That holding of 2,564 shares of the Lebanon Bank was out of an issue of how many? A 5,000 shares.

Q Is the Perth Amboy Bank on its feet now? A Yes, sir; fine shape.

Q Under good management? A Fine shape and loans money.

Q That required additional capital? A Yes, sir; they put in $250,000 more capital and the Lebanon Bank is also in good shape. They put in an additional capital of $250,000.

Q How many shares of stock of the Hobart Trust Company did the New Jersey Bankers Securities Company own at the time of your appointment? A 30,210 out of a total of 40,000 shares.

Q Was that bank functioning and operating on the day of your appointment? A No; it was closed.

The Court: Closed by whom?

The Witness: By the Commissioner of Banking and Insurance.

Q Did you sell those shares of stock? A These were sold by an order of this court.

Q What price? A $14 a share.

Q What did it stand the company? A Cost us $82.03.

Q Per share? A Yes, sir.

Q Is the Hobart Trust Company now functioning? A Yes, sir.

Q Under a new board of directors? A Yes, sir.

Q Are they doing well? A It is a good bank now. It is consolidated with the Peoples Trust Company of Passaic. It is now known as the Passaic Trust Company.

Q Did the New Jersey Bankers Securities own any shares of stock in the Equitable Title & Mortgage Guaranty Company of Passaic? A 1,130.

Q Out of how many? A Out of 2,000 shares.

Q They cost the company how much? A $159-.47 a share.

Q Still own those shares of stock? A We still have them.

Q In what condition did you find that company upon your appointment and what is its condition today? A The company is frozen. Operating just barely to make expenses; can't make any money; never will make any money; never made any money. That company ought to be liquidated as speedily as possible for the interest of the stockholders without any question. The public are not concerned in it.

Q Have you as receiver found it necessary to advance any money to that company? A That company ought to be assisted. I think we did advance some money in order to pay certain obligations, by the pressing of the Commissioner of Banking & Insurance to take up certain mortgages, which have become illegal as security, for permission to do business, and I believe that company ought to be wound up as speedily as possible.

Q Now, Mr. Stamler, amongst the items securing Mr. Harry Weinberger's promissory note of $2,300,000, is a mortgage of $200,000 on an apartment house in Passaic? A Yes, sir.

Q Are you acquainted with that item? A Yes, sir.

Q Do you and Mr. LaVecchia hold possession of the $200,000 mortgage? A It was $100,000.

Q I am speaking of the $200,000? A No; we abondoned that. We deemed it advisable to abondon that because this mortgage was foreclosed by the building and loan for failure to pay dues, taxes, insurance; and that accumulated very quickly

Just as I say, there was no supervision—(interrupted).

Q Was this mortgage cut off by that foreclosure? A Yes, sir; cut off.

Q Do you know what condition of priority this $200,000 mortgage had? A At that time it was subject to about $380,000 or $360,000.

Q Third mortgage? A Second mortgage.

Q Third mortgage? A Third mortgage, that is right; there was $50,000 to the bank; they were cut off, too. They abandoned that.

Q There was one other mortgage of $100,000 amongst Mr. Weinberger's collateral. What happened to that mortgage? A That mortgage was foreclosed by us and we bought in the property. We believe it to be a good investment for the Bankers. I think we can realize money out of it.

Mr. Ruback: I offer in evidence the entire record in the suit of Fanny Meyer against the New Jersey Bankers Securities Company, Chancery Docket 73.

Mr. Glauberman: I object to that going in. First—(interrupted).

The Court: Note your objection on the record. You have taken an appeal to the Court of Appeals. You are going to take another appeal to the Court of Appeals, and I am going to have before the Court of Appeals the entire record as it has been before me, and then the Court of Appeals can pass upon the correctness of my judgment.

Mr. Glauberman: I might not want to take an appeal; your Honor may decide in my favor.

The Court: The objection is overruled.

Entire record in Meyer *v.* Bankers (Docket 69, p. 152), marked exhibit.

By the Court.

Q After the dismissal, or at the time of the dismissal, there was an agreement entered into with Mr. Weinberger adjusting to some extent or attempting to adjust all of the claims that the Bankers had against the Board of Directors and Mr. Weinberger. A That is correct.

Q At that time was a new board of directors elected? A Yes, sir.

Q And when was that? A It was on the —I would say in August, 1928, sir.

Q And you headed that board of directors as president? A Yes, sir.

Q You had associated with you whom? A I had associated with me Mr. E. M. Waldron—(interrupted).

Q Tell me who he is. A Mr. Waldron is one of the largest builders in the State of New Jersey; a man who is director of a number of fire insurance companies and one of the large banks in this city.

Q Resident of Newark? A Resident of the City of Newark. Mr. Graham McGregor, president of the Port Newark National Bank of Newark, I had Mr.—I have forgotten his name, president of a bank in Orange—not in Orange—Mr. Kelly, I mean. It is in the minute book.

Q Handing minutes book to witness.) A Mr. Edward Bauer, county register of the

County of Union, director and vice-president of the Elmora State Bank.

Q You were speaking of Mr. Kelly. A Mr. Kelly was—William Kelly, who was president of one of the banks, sir, in this county. A man of very high repute, and we had Mr.—of the old board we had Mr. William W. Evans.

Q Any other? A Yes, sir; Abraham Jelin, director of the New Brunswick National Bank & Trust Company and Commissioner of Highways; those were the only new men.

Q And the old? A The old board consisted of—(interrupted).

Q Old members continuing on the new board? A The old men continuing on the new board consisted of Senator Edwards, William W. Evans— (interrupted).

Q Who is he? A Mr. Evans was a lawyer in Paterson; very able young man; John J. Roegner, mayor of Passaic, Judge Minturn, Justice Minturn.

Q Now, who of the old board dropped? A Mr. Harry Weinberger, Frank Campbell, Frederick M. Bidwell, David G. Smith. I think that is all, sir, that I recognize.

Q Was it part of the arrangement for the dismissal of the Meyer suit that these men be dropped? A Yes, sir.

Q And part of the arrangement that the gentlemen you named should go on the board? A Yes, sir.

Q In the hope and expectation of what? A That this company would be eventually reorganized and continue to function with safety to the public and to the corporation, but with the idea that I was not to remain, sir, on the board. It was never intended that I should

continue to be president of the board or be a director of this company.

Q How long were you to stay? A I was to stay until a new president was elected and until this company was reorganized. In other words, I served—(interrupted).

Q How about the new men; were they temporary men, too? A The new?

Q Were they intended to be temporary, too? A No, sir. No, sir. These men were not to be temporary. I was the only one that was to resign. That was the understanding.

Q Then there was at that time a reorganization? A Yes, sir.

Q What reorganization are you speaking of "until the reorganization"? A Well, it was intended that Senator Edwards would assume the entire burden of managing this company. That he would devote all his time and attention to this corporation.

Q What were the others to do? A They were to be members of the board of directors and advise with—advise in the management and assist in the management of the company.

Q What happened? A Well, after I left, two or three months afterwards, they one by one resigned.

Q When you left who in charge? A When I left Senator Edwards—oh, I left Mr. Jelin there in charge as vice-president and Senator Edwards as president; that is right.

Q And how long did Mr. Jelin continue? A Mr. Jelin continued as I recall it until the following April.

Q You were in there from when to when? A I was there from July until about the first of September.

Q And these other gentlemen? A They stayed on.

Q Who procured the new members? A I did, sir; subject to your approval. I submitted the names to you, sir.

Q For the purpose of delivering up this company—(interrupted). A Yes, sir; we had this thought in mind at the time, Vice-Chancellor; at least, I did, that Mr. Weinberger, who was the controlling factor of this company, who had so much at stake, after this settlement was made, that he would devote really all his time and attention to this problem and also Senator Edwards, who was in duty bound to do so, and when we left this company in September, 1928, this company—the assets of this company equalled, with the obligation of Mr. Weinberger, two million and a half—it was fully secured at that time—and we had plenty of cash and securities on hand. In other words, when we left the company in September, 1928 —(interrupted).

Q Who is "we"? A That is, when I left in September, 1928, the $2,300,000 note was secured by stock of the corporation which was then of a book value of around nine to ten dollars—actual book value, sir, and in addition thereto, we held his mortgage for $100,000, questionable mortgage of $200,000—was the best we could do—we had $200,000 in cash and life insurance policies and had other securities, Hobart stock which was then worth around fifty or sixty dollars a share—so when I left that company the note was fully secured and the value of that stock was between nine and ten dollars a share, sir. Now, what happened afterwards was this: that the corporation did not

exercise good judgment in not selling the Hobart service stock which they then could sell around fifty dollars a share, or do the other thing, as I duly advised them, is to put all their eggs in one basket, into the Hobart Trust —put all their money in there and watch that basket. Had they done either one of the two things the corporation would have probably have functioned to the benefit of the stockholders and creditors.

Q You mean put the money in the Hobart to protect the Hobart? A Yes, sir, to protect the Hobart and develop the Hobart; devote all the time and attention to that one business alone. There was enough there to pay dividends in perpetuity to every man who had a dollar invested in that.

Q What was done in fact? A In fact they started to fight among themselves. That is really what happened there. Mr. Weinberger could not get along with Mr. Roegner and Mr. Roegner could not get along with Weinberger. There was always a scheme or plan to work out how they could avoid paying the guarantees of Weinberger—that is the directors were planning constantly to work out some plan whereby they would be relieved from paying the guarantees of Weinberger. That is speaking now of Roegner.

Q What do you mean by "guarantees"? A There was, in addition to that settlement—we took guarantees from the directors of $50,000 each guarantying the note of Harry Weinberger.

Q How many? A There were nine, sir—nine guarantees.

Q Who were they? A There was Senator Edwards, Justice Minturn, Mr. Roegner, Edward Schane, William Harris, Frank Campbell, William W. Evans, David G. Smith and one more, sir; I just can't think now—Bidwell.

Q Continue with your effort to get rid of the obligation. A I might tell you some things in connection with that. I was in close touch with the Bankers situation through Mr. Jelin. He came in and asked me—and advised with me. Finally it went on—it was in the first week in January of 1929—the first week in January I was called up on the phone by Mr. Jelin that the Banking Department wants to close the Hobart bank. I asked him why. He said he didn't know, but Mr. Smeaton had written a letter—he was the president of the bank at that time who we put in—that is, the new group put in—

Q I don't want this testimony unless it has a bearing upon the management. A That is part of the management, sir.

Q You see, at that time I gave back the company to the new board of directors in confidence that it would be a success and I want to know how they got along so that I may know the present condition. A The reason I am saying that, making this statement, is that it is part of the management. When I left the company it was understood, and it is on the minutes, sir, that the corporation would put in ten dollars a share into the surplus of that bank, of the Hobart bank, in order to strengthen it, in order to overcome the increase that they took on the books of the company by reappraising their real estate. The management after I left did not do that and did not put the money up although they agreed to do it.

Q And they had the money? A And they had the money. Mr. Smeaton went in as president at my request only upon the express understanding that that money would be put up; so that when January came the money was not put up and Mr. Smeaton theatened to close the bank.

Q Who? A Mr. Smeaton. I came then to the New Jersey Bankers' meeting the first time after I left that company in September and there I found the whole board of directors of the Hobart company together with the directors of the New Jersey Bankers, the Commissioner of Banking and Insurance, Mr. Murton, then the deputy, and Mr. Markley, then the examiner, ready to close the bank. We got into quite a discussion there and with the result that the Commissioner agreed not to close the bank and that they would put up the money, $500,000, the Bankers, and that Mr. Roegner would be elected president instead of Smeaton. Mr. Roegner was duly elected president, and he then was president of the company and director of the New Jersey Bankers. The money was never put up to assure safety of that institution, resulting in the closing of the bank.

Q It required $500,000? A It required $400,000.

Q And they had it on hand? A They had it on hand and they could have gotten it any minute they wanted it. It was only a question, sir, whether good business judgment would dictate putting in $400,000 in cash as against 32,000 shares of stock and the other 8,000 participating putting nothing in, but that was a small sum of money involved in a business transaction—$80,000—to save a huge fortune. I might fur-

ther say in connection with the bank that during the six weeks I was there Mr. Weinberger liquidated, under pressure, $400,000 or $500,000 worth of notes of that bank, and then pressure was brought upon him to sell his Passaic newspaper and he got the money and paid the money back into the company—into the bank.

Q The Hobart company? A The Hobart bank. But after I left no effort was made to collect in any of the slow paper at all. There was no management.

The Court: You may offer in evidence the case of Bernstein against this company on bill to restrain the company from delivering all of its assets to the Equitable Finance Corporation of New York.

Mr. Ruback: I intended to make that offer after asking Mr. Stamler two or three questions. I want to lead up to it.

Mr. Glauberman: I object.

Mr. Ruback: I am not making the offer yet.

The Court: You may put your objection on the record. That is your privilege and your right, and I will regard it in its broadest sense.

Mr. Glauberman: It is voluminous and it will cost a fortune to have it printed.

The Court: Under our rules you are not obliged to print. Counsel will have to agree upon the substance of it.

John Stamler, direct.

Further direct.

Q When did you resign as president of the New Jersey Bankers Securities? A About September 1, 1928.

Q And before you resigned had Mr. Jelin joined the directorate of the company? A He was on the point— (interrupted).

Q Did he continue after your resignation? A He did.

Q Was he appointed to any office? A Vice-president.

Q And did he have any duties with relation to the management of the business of the company? A Yes, sir.

Q What were they? A He was general manager of the company.

Q Do you know whether he was in attendance at the office of the company? A He was there every day excepting on Tuesday, when he was required to be in Trenton.

Q Now, Mr. Stamler, did any trouble develop between Mr. Jelin and any other director, any dissension in the board respecting the proposed deal with the New York company? A Yes, sir.

Q When did that dissension develop? A That started in February of 1929.

Q Will you state what was proposed and what directors objected to it?

The Court: That might save you exactly what you feared before. He might describe it shortly and save you printing that record. Just state the facts.

The Witness: There was a proposition made by Mr. Weinberger on behalf of the company to merge with the Equitable Fi-

nance Corporation. This matter was submitted to the board of directors. Some of the board of directors were in favor of it and others were against it. Mr. Jelin, Mr. Evans and Mr. Veghte were against it, resulting in a trial. This dispute. Then a dispute arose between Mr. Weinberger and Mr. Jelin and the remaining board and Mr. Jelin was discharged as general manager of the company and Senator Edwards assumed full charge of the company from that time on.

Q Now, let me ask you, was it after he assumed—after Senator Edwards assumed control of the company upon Mr. Jelin's discharge that the Lebanon National Bank was bought? A No, sir; the Lebanon bank was bought after I left in September, and I think it was closed some time in October or November of 1928.

Q Who then in charge? A In charge was Mr. Jelin—that is the active man in charge. Senator Edwards, however, was the president of the company and everything was done by a majority vote. It was not done by an active individual, sir, like we do in banks, or like we do in business.

Q Who negotiated the purchase of that bank for the bankers? A Mr. Weinberger did all that.

Q Not Mr. Jelin? A Oh, no!

Q Wasn't Mr. Jelin the manager at that time? A No. You see— (interrupted).

The Court: All right. I only want the facts.

Q Now that dissention you refer to between the directors concerning the proposed merger or deal with the Equitable, did that precipitate any litigation? A Yes, sir; a bill was filed in this court.

Q By whom? A By Mr. Bernstein.

Mr. Ruback: I now offer in evidence the file in the case of Solomon Bernstein against the New Jersey Bankers' Securities, Case No. 1.

Mr. Glauberman: I object.

The Court: The New Jersey Bankers' Securities agreed with the Equitable Finance Corporation to surrender all of its tangible assets and take from the Equitable in substition Equitable stock at a ratio of four shares of the Bankers for one share of the Equitable; an injunction went and appeal was taken—injunction went upon consent of counsel and notwithstanding the appeal. The appeal was never pressed. I think probably that will be enough for you in lieu of the record. The record is in. (Exhibit C. 15 of this date, Chancery Docket 73, p. 84).

Q Now, Mr. Stamler, did you as receiver have any life insurance of Mr. Weinberger—insurance on the life of Mr. Harry Weinberger as collateral to the $2,300,000 note? A Yes, sir.

Q Have you still got the life insurance? A We have the policies. They all have been cancelled.

Q Why? A For failure to pay premiums.

Q Mr. Weinberger has paid no premium on those policies since your appointment? A Yes, sir.

Q Have those life insurance policies any surrender value? A One policy has.

Q Much? A Six hundred and fifty dollars, and I just agreed, subject to the approval of the Court to permit the continuance of that one policy for a period of a year, and to use up that surrender value for that purpose.

Q What for? A In case of his death, sir, we could collect the principal. Never can tell what will happen.

Q What is the principal sum of that policy which you are seeking to keep alive? A $100,000.

Q I show you what purports to be a promissory note for $2,300,000 dated October 4, 1928, and ask you whether that is the note, and the supporting guarantees that you have heretofore referred to? A That is a copy of the note, sir.

Q I mean, a copy of it. A Yes, sir; I have the original in our possession—that is, the receivers have.

Mr. Ruback: I offer the copy in evidence.

Mr. Glauberman: I do not think it is material.

(Paper marked Exhibit C. 12.)

Q Did you, through your counsel, conduct any examination of Mr. Weinberger for the purpose of determining his solvency? A Yes, sir.

The Court: I am not interested in that. How am I interested?

Mr. Ruback: I think you are interested in knowing whether that asset of $2,300,000 is good. If it is not, the losses are increased from five to seven million.

The Court: They occurred before the bill was filed, the losses.

Mr. Ruback: The insolvency of Mr. Weinberger, if it be a fact, and I have his admission to that effect— (interrupted).

The Court: I think there can be no question of the insolvency. There is another jurisdictional fact to be determined and that is, is its business being run to the prejudice of the stockholders and so that it cannot with safey to the public continue.

Mr. Ruback: It appears to me that if an asset of that size is worthless shortly after after the appointment of the receiver, the reasonable inference is it was worthless at the time. I offer it in evidence.

Mr. Weinberger: I object.

The Court: Objection overruled.

Mr. Glauberman: It is an admission in the testimony of Mr. Weinberger that he was insolvent.

The Court: I didn't understand that.

Mr. Weinberger: I submit that is not proper.

The Court: I thought you were going to establish the loss and that you were doing it by some legal method. Objection sustained. Strike out the former ruling.

RECESS.

Continuation of hearing pursuant to adjournment.

Mr. Glauberman: I have a motion to make in this proceeding. The order to show cause which we are here this morning, that we are to show cause why a statutory receiver should not be appointed—yesterday your Honor intimated that as far as the facts are concerned, you have already made up your mind that a statutory receiver was warranted.

The Court: What?

Mr. Glauberman: As far as the facts are concerned in this case you have made up your mind that the statutory receiver is warranted.

The Court: When did I say anything of that kind?

Mr. Glauberman: In the following statement. Your Honor stated to me that I will actually appeal. I therefore feel, as advocate in this case, that I would like to move for your Honor's serious consideration this question—this matter being serious to the defendant, much more so than the compainant, because the complainant is the owner of only sixty shares, that in view of your Honor's statement, intimation, that your Honor prejudges the case, that by reason of the duty I owe to the Court and client—there is no personal duty, just a matter of the seriousness involved in this case, I would like to move that your Honor remove yourself from the further consideration of the case. It is a question of appealing to your Honor's discretion in the matter.

The Court: I have no recollection and I am quite sure I have given no expression of prejudging the petition that is now before me. I think the record will bear me out that I said that a full picture of what has been before me, will be before the Court of Appeals so that upon appeal they will know what I know. If I said anything to you—I do not recall saying it, it was not you personally. I have not as yet made up my mind what I am going to do. I have two million dollars to handle. The stockholders and so-called directors want it paid over to the company. Others want the fund distributed. Each side has the right to appeal from my judgment whichever way I may decide. If I declare the corporation subject to a permanent injunction and a permanent receiver, you have your appeal. If I turn the money back, the other side have an appeal. In either event the Court above will say whether I am right or wrong. If neither party sees fit to appeal I will feel that I am right. I decline to remove myself and I think it is utter impertinence for counsel to even suggest it.

JOHN STAMLER, recalled for further

Direct examination by Mr. Ruback.

Q You were reading from Exhibit C. 5, a list of the Company's securities at the time you took possession last July. You testified to the cost of certain bank stock (interrupted)

The Court: Is there anything of that kind in the two papers that were filed yesterday, one by Mr. Glauberman and one by Mr. Weinberger, which I have not read?

Mr. Weinberger: You have no right to make an aspersions of that kind and I resent it. I do not like the innuendo. I resent it as a lawyer.

The Court: Withdraw your remarks.

Mr. Weinberger: I will be pleased to. May I put myself on this record—

The Court: Withdraw your remarks.

Mr. Weinberger: I will be glad to. I am pleased to withdraw my remarks, your Honor. I do not desire to say things to the Court and I do not like the Court to say things that hurt me.

The Court: They are not offensive to you. They were not intended so.

Mr. Weinberger: That is all I want, sir.

The Court: I insist upon your apologizing to the Court for your conduct.

Mr. Weinberger: If your Honor please I thought I had done what your Honor asked.

The Court: I insist upon your apologizing to the Court for your conduct.

Mr. Weinberger: I respectfully submit it was not my intention to say or do anything that might in anywise hurt your Honor's feelings.

The Court: It is not my feelings. Forget me. I am the Court of Chancery. You are a member of the bar. You have no right to address the Court as you have. I insist upon your apologizing.

Mr. Weinberger: If your Honor please I respectfully apologize to the Court for anything I might have said.

Q Mr. Stamler, you were reading from Exhibit C. 5 which contained Schedule A-1 a list of securities owned by the company last July when you and Mr. LaVecchia were appointed and you gave us yesterday figures of the cost —cost to the company. Now, was the cost of $250 per share for the 1,150 shares of the Perth Amboy National Bank a fair and reasonable cost. A No, it was not; it was exhorbitant.

Q Much so? A To at least the extent of $50 a share.

Q What have you to say to the cost of the 2,564 shares of the Lebanon National Bank for which the company paid $306.62? A That stock was never worth more than $150.

Q What have you to say as to the cost of the 30,210 shares of the Hobart Trust Company of Passaic which cost the company an average of $83 a share. A The stock was worth between $40 and $50 a share.

Q You have had some experience with bank securities, bank stocks? A For the last fifteen years I have been in it.

Q You have for some years been president of the Commercial National Bank? A Yes, sir; and other banks.

Q And in that position you became familiar with bank matters? A Yes, sir.

Q When you were appointed last July and took possession of the securities of this company did you inform yourself as to its financial position? A I did, sir.

Q And experience in its operation, its profit and loss experience? A Yes, sir.

Q Are you able from that examination to say whether speaking as of July 25, 1929, the company in the position as it then was, could continue to operate with profit or with advantage to its stockholders? A No, sir. There was no constructive plan of operation at all. That company never enjoyed that.

Q I will ask you why could not the company continue at a profit?

Mr. Glauberman: I object.

The Court: Objection overruled.

The Witness: The reason? Because the directors never conceived or planned a definite course of conduct. It was haphazardly operated. There was no—no one was thinking about the company. There was internal dissention. Mr. Jelin, who up to April was the watchdog of the treasury, and that is all—he didn't have the support of the board of directors, and no plan could be conceived by a board which did not unite in some definite object. When you get money together or go into some business you must have some vision of what you are going to do, and all that was done from September up to April was buying here and there a few shares of stock in the market and selling them at a profit or loss. That is not a business. That is a speculation.

Q Were there any men on the board of directors of this company or actively associated with the conduct of the business, who gave their entire time to that business after you withdrew

as president? A Mr. Jelin did, he was the only one.

Q And Mr. Jelin resigned from that position when? A Mr. Jelin resigned immediately after Senator Edwards was defeated for re-election. That is, they forced him out of the general managership by various charges, which appear in the record, in the minute book, in order to place Mr. Edwards in full charge of the company.

Q Who forced Mr. Jelin out? A The board of directors. There were charges made against him, trials had, and on my advice Mr. Jelin continued to remain as director in order to watch the situation.

Q Was Mr. Jelin's withdrawal from the active management of this company in any way precipitated by his activity in the first Bernstein suit? A Why, yes, that was the real quarrel—when the quarrel started.

Q And are you able to fix the month in which Mr. Jelin withdrew? A My recollection is some time within February and March that they discharged him as general manager of the company. The minute book will speak.

Q Now, from that time—from the time of his actual withdrawal down to the day you were appointed, July 25th, did this company have the constant attendance of any person who was experienced in buying and selling securities? A I don't know what was done after that period when Senator Edwards assumed the leadership. I did have a talk with Senator Edwards immediately when he did assume the leadership and told him in the presence of Mr. Weinberger and most of the board that the only way to save this company is by watching the Hobart Service and putting all their interests in that—the Sena-

tor should assume the leadership of the bank and devote all his time at the bank and put all the money that the company had right into that institution and they would eventually make a profit for the stockholders. The Senator thought that that is what he was going to do, but whether it was, in fact, done, I do not know. I understood he went to Europe after that and was away for a number of months.

Q Do you know whether during that same period after Mr. Jelin withdrew and up to the 25th of July Mr. Harry Weinberger had any active or practical connection with the conduct of this company? A Mr. Weinberger was always the man behind the throne as he should have been. He controlled that large block of stock which meant to him all, and necessarily he controlled the policy of the institution through the board of directors.

Q Do you know whether the New Jersey Bankers Securities acting by its board of directors did anything towards the selection of the board of directors of the Hobart Service Trust Company? A I understood that was—yes. Yes. That was done, and that received some careful consideration when Mr. Smeaton was induced to take the presidency of the bank.

Q Who selected those persons who were directors of the Hobart Service Trust Company at the time that the bank was closed by the Banking Department? A This was done naturally through Mr. Weinberger. He was in possession of the stock and he was the responsible man in this whole organization. The whole thing surrounded him—it had to.

Q You say, Mr. Stamler, that he was in possession of the stock. The Securities Company

owned the controlling interest in the Hobart Service? A It did.

Q Who was it actually selected the personnel of the directors of the bank? A At the day—on the day when the Banking Department came to close the bank, that is, in January, 1929, the directors of the two institutions, that is, of the Hobart and of the—of the Bankers—decided upon a policy—a definite policy as to who shall be the directors and so forth of the Hobart Service Company. They did that at that time and gave it some careful thought.

Cross examination by Mr. Glauberman.

Q Mr. Stamler, your profession is what? A My profession is a lawyer, and I have been in banking for the last—since 1919.

Q You have been a lawyer since when? A 1901.

Q And you have had quite extensive banking experience? A I think I have, yes, sir.

Q You were not originally connected with the New Jersey Bankers Securities Company? A No.

Q In fact, you did not buy any stock in the New Jersey Bankers Securities? A I did buy 50 shares of stock after I became—in order to qualify to become a director of the company and also presented 10 shares each to the other gentlemen that I selected as co-directors.

Q But not before? A Not before or after.

Q You had nothing to do with it? A No, sir.

Q Then after—before you assumed the presidency of the company you knew there was a suit by Fanny Meyer pending? A There was a suit then pending.

Q That was subsequent to the date of the commission investigation? A After.

Q I mean after. After the date of the David commission? A Yes, sir.

Q The bill of complaint that was filed charged the directors with misfeasance in office, charged them with making an illegal dividend, charged them, as you recall, with making bad investments and charged them with purchasing their stocks illegally, is that correct? A That is correct.

Q Subsequently thereto the Court asked you to come in and help the situation out? A No.

Q He asked you to assume this—(interrupted) A No; that was not the situation. Mr. Weinberger together with a number of stockholders and asked me to come in and see whether I couldn't help out the situation and to reorganize the company. I presented the matter to Vice-Chancellor Backes and Vice-Chancellor Backes blessed the proposition.

Q You assumed this presidency not for any personal profit? A No.

Q Just as a public citizen interested in the stockholders? A Yes, sir.

Q And tried to save the situation as much as you could? A Yes, sir.

Q And if possible effect a settlement between the complainant—it was in the nature of a stockholders bill—and the defendant corporation? A Yes, sir.

Q In order to prevent that the Court should not appoint a receiver and dissolve the company? A Yes, sir.

Q Then you assumed the presidency and you also—then the old board resigned, is that correct? A No, sir.

Q How many of them resigned? A I think four got out and four new ones put in.

Q Five or six came in, including yourself? A I don't think I had six. I think I had four and myself is five.

Q Waldon, McGregor, Bauer, Kelly and Mr. Jelin? A That is right.

Q The reason you had six was because the board of directors consisted of how many? A Ten. We had a majority.

Q So you had a majority in control of the board. After you assumed the presidency no new investments were made by you? A No, sir.

Q In fact, all the purchases had already been made by the previous board of directors? A Yes, sir.

Q The Hobart bank stock, Perth Amboy, Lebanon, Equitable, all those bad purchases? A The Lebanon was only a contract of purchase.

Q But they were bound—the company was bound to purchase it? A I am not so sure about that.

Q But at any rate the contract was made by the previous board and not by yourself? A Yes, sir.

Q Then tell us, Mr. Stamler, after you took the presidency, what was the main object you were going to accomplish? A First, I think, that Mr. Weinberger learn a lesson in finance and that he would devote all his time and attention to a proper management of this company, although he was not a member of the board of directors. Even when I served Mr. Weinberger was invited in and I welcomed him to sit in and advise with us, even during the settlement. Mind you, the day the case was

settled, I resigned. On the very day I got out, and I believe that Mr. Weinberger, together with Senator Edwards would devote their time and attention to this company with a view that the main—that the many losses would be eventually restored, or a substantial portion thereof and for that reason I insisted that Mr. Jelin would become the so-called general manager in order to watch the treasury. What I wanted was a watch dog of the balance of the money. I believe that Mr. Weinberger at that time had honest intentions of doing so. Upon my resigning he immediately called a new election and elected a new board of directors, not because we resigned, but a new board of directors was elected which changed the complexion of the board immediately. The only men that remained from our group were Mr. Jelin and Mr. Evans whom I have the greatest confidence in. He was always with us and his judgment was very good, and Mr. Veghte was invited in by Mr. Jelin and the rest of the men who were elected on that board represented the personal friends of Mr. Weinberger who went along with him as he wanted them.

Q I will come to that in a moment, please. I just want to confine myself to the period when you came in and what you did until your resignation. Those men that came in with you, those five gentlemen, they were not stockholders originally of the company, were they? A No, sir.

Q They were prominent bankers? A They were men who I was constantly advising with in order to bring about a settlement of this matter.

Q They did it as a matter of public duty? A Yes, sir, to aid the Court.

Q There was no question of any personal gain to it? A No.

Q Just as yourself? You received no compensation for that job? A None whatever.

Q Now, after you assumed the presidency, your attention then was directed to the settlement of the suit between the stockholders and the company. And in order to settle the mismanagement of the directors including Mr. Weinberger, is that correct? A Yes, sir.

Q And then you agreed upon a settlement? A Yes, sir.

Q In which, if I can summarize it, Mr. Weinberger agreed to repurchase practically all the stock which the company bought illegally and he paid by giving $200,000 in cash, $2,300,000 notes and securities? A Yes, sir.

Q And nine other directors signed a bond, I believe, in $50,000 each? A Guaranty.

Q Guaranty; and you submitted it to the Court? A Correct.

Q And upon that statement of fact the bill was dismissed when the settlement was made? A Yes, sir.

Q Now, at that time you knew that the company had a deficit of over $700,000 on the books? A Yes, sir.

Q Without figuring the shrinkage or actual value of those stocks that they purchased; is that correct, Mr. Stamler—without figuring the actual value of the Hobart, Perth Amboy and Lebanon stock? A I don't remember the figures. All that I can tell you is the actual value of the stock at the time we quit—I quit—was between nine and ten dollars a share.

Q I do not refer to the stock. I have reference to the bank shares of the Hobart, Lebanon

and Perth Amboy? A That represented the assets.

Q Exactly. Now, without figuring the shrinkage in value of the actual market value of those stocks there was a deficit of over $700,000 on the books? A Yes, sir.

Q And before you agreed—before you yourself agreed to the settlement you made an investigation of whose the then members of the board were going to be? A Which members of the board?

Q The new members coming in Senator Edwards, Justice Minturn, Mr. Jelin, Mr. Evans, Mr. Roegner, did you? Did you or did you not? A The board as I organized it consisted of five men—(interrupted).

Q I mean after the settlement? A That was before the settlement. We had nothing to do with getting a new board together. That was news to me. When Mr. Weinberger or the board of directors called a new election we had nothing to do with it. It didn't form at all any part of our settlement.

Q Now, Mr. Stamler, when you took charge of this company you had control of the Hobart Service, is that correct? A Yes, sir.

Q You had control of the Perth Amboy? A Yes, sir.

Q And of the other bank which the company had stocks in. You had the same stock they had in July 25th, practically; is that correct? A Yes, sir.

Q Now, Mr. Stamler, what did you do to save the Hobart situation at that time? A The first thing I did was to go down to the bank together with Mr. LaVecchia with the examiners and go through the entire bank.

Q I did not ask you after you were appointed receiver. A I am speaking now, sir, when I became president.

Q You went with Mr. LaVecchia at that time? A Not Mr. LaVecchia, I beg pardon. With Mr. Hannoch and McGlynn, and we spent the entire two days going over the bank working out the assets, working out the losses, whose notes were to be called, and sending for the customers with a view of getting the bank into liquid shape. Mr. Harry A. Weinberger assisted one afternoon in this matter with us and also to obtain a president for the bank. My acceptance of the presidency of the New Jersey Bankers was conditioned that Mr. Weinberger would resign as president of the Hobart Trust Company and the problem was to get a president of that bank, and we procured Mr. Smeaton, which we thought was a very excellent selection. We met with the board of directors and went over with them every situation of problem—the executive committee—and I devoted to that work at least a half a day each day that I was in charge of that company. I kept in constant touch with the bank, knowing what new loans went on and how the old loans were being paid off. I actually operated that bank during the time that Mr. Smeaton was becoming acquainted with it.

Q And you were satisfied before you resigned that the Hobart company was in good condition? A Only to this extent, that it required additional surplus in order to safeguard the deposits. The writing up of the assets created a fictitious surplus and there ought to have been an honest cash surplus in there, and that is the reason there was a recommendation and really a resolution by our board to pay in the $400,000.

Q Besides working on the Hobart situation you also worked on the settlement? A I also worked on the Perth Amboy bank. I had Mr. Jelin elected a director of that bank in order to watch that situation, that institution, and I personally went down and met with the board to try to clean up the situation over there.

The Court: Of what interest is this? What do you seek to show?

Mr. Glauberman: I want to show that the situation has practically not changed since the time Mr. Stamler left the presidency until July 25, 1929. That is my purpose.

Q At the time you left the presidency and a new board came in, they had all this bank stock which they held in July 25, 1929, practically the same, is that correct? A 1928, you mean?

Q You left in September, 1928? A That is right.

Q I say, they had the same stock in possession when the receivers were appointed July 25, 1929, practically the same.

The Court: You mean the Bankers had the same.

The Witness: Substantially.

The Court: What counsel means is that the Bankers had the same holdings in the Hobart on the 25th of July as they had when you left in September, 1928.

Mr. Glauberman: And in the other banks.

The Court: Confine it to that one.

Q And the same in Perth Amboy? A Yes, sir.

Q And the same in the Lebanon? A No, sir.

Q The Lebanon—pardon me, they hadn't purchased that? A No.

Q They had an option? A No; they had a contract.

Q Had a contract. And they had the same in the Equitable Insurance, was it? A Equitable Title.

Q The condition then of the assets of the company was they were frozen, is that correct? A The assets of the Hobart Service were not frozen; after Mr. Weinberger paid off about a half a million dollars that bank became in very good shape. That money was paid before I left the Bankers. Mr. Weinberger paid approximately a half a million dollars off of his own loans direct and in fact, loans that that bank carried of Mr. Weinberger's.

Q Did you have any offers while you were president of that bank to sell the holdings in the Hobart Service Company? A Yes, sir.

Q What offers did you have? A We had offers running as high as $50 a share.

Q What action did your board take? A I advised—we took no action because we were there temporarily, but I advised the selling of the Hobart at $50 or around that figure.

Q You had the majority of the board, didn't you, Mr. Stamler? A We were there temporarily. The understanding was that I was to be there temporarily. I left on the day the Court ratified the settlement—I resigned as president, so I was only there for a period of six weeks for the purpose of getting this thing shaped up.

Q Feeling that you had done your job? A I felt that Mr. Weinberger and the Senator, who

were very much embarrassed over the situation, would continue to operate on the policy outlined by me.

Q And then on September 1st you resigned as well as the five other directors that came in with you except Mr. Jelin? A That is my recollection.

The Court: Is that the fact?

The Witness: That is my recollection.

The Court: By the five you mean—(interrupted).

Mr. Glauberman: Kelly and the others. They went out and a new board of directors was elected.

The Witness: That is correct.

The Court: How soon after you went out was the new board elected?

The Witness: That was a simultaneous transaction, as I recall it, Vice-Chancellor. The names were submitted to you how the new board would be constituted.

The Court: That new board composed of the men—(interrupted).

The Witness: No; that was the board for the purpose of reorganizing it only. We then succeeded in getting new men together for the purpose of going ahead and operate with Senator Edwards at the head.

The Court: Who were they? When was that?

Mr. Glauberman: September 11th, I think.

The Court: Who were the new members?

The Witness: There was a letter that went out over my signature, Vice-Chancellor.

Mr. Glauberman: Mr. Jelin remained. He was elected on the new board.

The Court: Have you the new board?

The Witness: Yes, sir.

The Court: It has just passed from me at the moment.

Mr. Glauberman: Senator Edwards, Stafford, Roegner, Armstrong, Morrisy, Evans, Minturn, Ross, Jelin and McCormick.

Q Just one more question as to the condition of the company at that time. The stock which the New Jersey Bankers Securities held was not dividend yielding, was it? A The income wasn't very big.

The Court: You mean of the Hobart?

Mr. Glauberman: Hobart, Perth Amboy and the other bank.

The Witness: The only stock that ever paid no dividends was the Perth Amboy bank. All other stocks paid dividends.

Q Did the Hobart pay dividends? A Yes, sir.

Q Was the income from the dividends sufficient to carry the company at that time? A Oh, yes; more than sufficient.

Q More than sufficient. Didn't the Hobart stop paying dividends before you resigned? A No, sir.

Q You knew they stopped at one time? A My recollection is that they did not pay their dividend in April, 1929. Up to that time they paid dividends.

Q Now, after you resigned, Mr. Stamler, the new board came in, you had nothing to do any

more with the Bankers Securities? A No. I simply was naturally interested to see how it was going to work out.

Q You personally didn't attend any of the meetings of the board of directors? A No, sir.

Q You were not in charge? A No, sir.

Q In any sense of the word? You had just come in, in July until September to help out the situation, is that right? A That is right.

Q So all the testimony you gave us yesterday dealing with the period from September, 1929, until July 25th—September 1, 1928, to July 25, 1929, was not of your own information, was it? A Oh, yes.

Q It was based on what somebody else told you? A Oh, no. It was based upon facts that were within my knowledge, that I actually participated in. When they got into trouble they sent for me, and I attended those meetings only for the purpose of giving advice and leaving them to determine their own policy.

Q How many times did they call you in? A My recollection is it was three different occasions.

Q What were those occasions, Mr. Stamler? A The first occasion was—let me just get myself together—the first occasion was when I was present at a conference of the board when Mr. Roegner presented a problem of selling the Hobart stock to a Mr. Hughes and his group.

Q When was that? A I would say that that was around November of 1928, and at which time it was planned to sell one-half of the stock—or one-half of the stock to Mr. Hughes' group at $50 or $55 a share and the other one-third—the remaining stock Mr. Roegner wanted for his services in bringing about the sale. Mr. Wein-

berger did not approve of it. He was present at that meeting, and that is the day when I told Mr. Roegner that he cannot make a profit of that kind on his company when he was a director, that he can't play double in this thing. That meeting broke up in quite some excitement. Then the second time I met the group is when the bank department threatened to close the bank, and that was—(interrupted).

The Court: Tell me again what was Mr. Roegner's proposition.

The Witness: His proposition was to sell fifty—sell twenty thousand shares of the stock to Mr. Hughes and his group at fifty or fifty-five dollars. I do not recall just now the figures—and the remaining stock he was to get for his services in bringing about this sale.

The Court: Ten thousand shares?

The Witness: Ten thousand shares. I then told Mr.—(interrupted).

The Court: All right.

Q What is the next time? A The next time was when the Bank Department threatened to close the bank.

Q When was that? A My recollection is it was the first week in January, 1929.

Q And what happened? A Why, I satisfied the department at that time that the bank ought not to be closed and I promised that the board of directors would, and they all agreed that they would, put in five hundred thousand in the bank as additional surplus.

Q When was the next time you were called in?

The Court: You mean by that, lend it to the bank?

The Witness: No, sir; to take it out of the assets of the bank and put it into the bank as surplus.

The Court: Put cash in the bank?

The Witness: That is correct, sir, and the next time I was there—(interrupted).

The Court: Now, will you explain to me again the need at that time?

The Witness: After I left there was no effort made to collect in the frozen assets. Mr. Smeaton did all he could, but he was constantly prevented by Mr. Roegner and the rest of the group who had personal interest in the institution, had loaned their friends under an agreement and they could not call them, and the bank was frozen.

Q When was the third time? A The third time I was there when the so-called trial and firing out of Mr. Jelin.

Q When was that? A My recollection is sometime in February or March, 1929.

Q That was after the fight with the Equitable? A No.

The Court: About that time.

The Witness: When they were considering the problem, I advised with them at that time. I was invited in there.

Q With the exception of those three times to which you have just testified, you had no other contact with the New Jersey Bankers Securities? A Yes, I did. Mr. Smeaton wrote me letters from time to time.

Q Mr. Smeaton? He was the president of the Hobart? A Of the Hobart. Asked me to use my influence with the directors of the Bankers to put in the four hundred thousand that they had agreed to put in when he became president. I took these matters up with the various members of the board. I visited Senator Edwards personally and had a talk with him, but it seems that they never got to it.

Q But you were not in touch with the company as a whole, were you? A No.

Q So the testimony you gave us yesterday was with the exception of those items that you enumerated today really were not of your personal knowledge, were they? A All the testimony I gave was of personal knowledge, otherwise I wouldn't have testified.

Q It was not as the result of what any of the directors told you, was it?

The Court: Some of it, necessarily.

Mr. Glauberman: The reason I am asking the question, if your Honor please, is that I respectfully submit that any information that Mr. Stamler has as the result of what somebody else told him is incompetent, except that information which he had personally.

The Court: Your objection is too broad. If he had gained that information from the directors in body assembled, and they were still directors, that would still be competent. Anything that he got from a director not acting as a representative of the board, of course, is hearsay.

Mr. Glauberman: As to that I move to have it all stricken out.

The Court: If you can find it you can have it stricken out. Locate it on the record and if it is hearsay I will strike it out.

Q Now, when did you become receiver, January 25, 1929? A Yes, sir.

Q When was the Hobart bank closed? A On that day or day previous. I have forgotten which.

Q July 24th. Then you immediately took possession of the New Jersey Bankers, is that correct? A Yes, sir.

Q And what did you do, if you please, with reference to the Hobart? Just briefly tell us. A Mr. LaVecchia and I went down to Paterson at once, or Passaic, at once interviewed the Department of Banking & Insurance, endeavored to procure from the department the last examiner's report, which we did not succeed in getting that day; we went and visited Ackerson, the president of the Passaic National Bank & Trust Company with a view of discussing with him, or tried to get him interested in the purchase of the bank. We spent some time with him and he told us he would let us know in a couple of hours. From there we left and went to the Peoples National Bank and interviewed the president—I have forgotten his name now—also with a like purpose. From there we went back to Mr. Ackerson, got there about five o'clock and he told us that he would not be interested in purchasing the bank so long as the Peoples group were interested—the Peoples bank group were interested. That evening we divided our work; Mr. LaVecchia was to take care of the work here, local, and then I proceeded that night to see Mr. Frank A. Smith, the Commissioner of Banking and Insurance, in

order to get permission from him to make an investigation of the conditions of the bank and procure the last bank examiner's report. I did get that the following day. We worked that night until almost one o'clock. The following day we got that report which disclosed a condition, that the bank was not insolvent, that there were plenty and sufficient assets to meet the liabilities of the depositors, although the bank was frozen. I found that Mr. Roegner, who was the president of the bank had not devoted any time to the bank at all, that he came there only once a week to attend the meetings, that Mr. Elliott, who was the executive vice-president, had absented himself or was no longer there and that the bank had no manager. Although the bank was not insolvent, I felt at the time that the Commissioner of Banking & Insurance was justified in closing the bank at that particular moment.

Q Mr. Stamler, did you compare the condition of the bank as of July 25, 1929, and that of September 1, 1928, at the time you left it? A Yes, sir; I did.

Q How did it differ? A It differed only in loss of depositors. The bank sustained losses —if you want accurate figures you may have the exhibits here. I gave them to you the other day. I think they lost about a million and a half in depositors in that period.

Q But they were not insolvent, as you say? A The bank was not insolvent, and I say it was in better condition—in better condition in 1929 than it was in 1928, due to the fact that Mr. Weinberger had paid off that money.

Q During the time you were president? A That is right. Well, he paid off the money.

Q Then you recall, there was an offer made by a group of bankers of Passaic to purchase

the holdings of the New Jersey Bankers Securities in the Hobart Service Trust Company? A Yes, sir.

Q And the offer was for how much per share? A I understood it was twenty dollars a share. Mr. Weinberger and the old board had made a contract to sell it at twenty dollars a share.

Q Then a day later what offer did you receive in court, if you recall? A Ten.

Q Wasn't it eight? A They withdrew that and offered ten.

The Court: On the morning that the bill was presented to me at Allenhurst, about twenty minutes after I had appointed the temporary receiver, Mr. Hughes and Mr. Whitehead came—I was still sitting on the porch. The receivers had just left—and they presented to me a resolution, or, as near as I recall it, it be resolved that the Bankers would sell the stock at twenty dollars a share provided Vice-Chancellor Backes would approve the sale. I told them that I had nothing to do with the sale, because the corporation—the Bankers corporation—had not then been in litigation before me—I mean as of the time, and I could not understand why they should ask me to approve the sale, but, I said, "I have just appointed the receivers. You take this offer immediately to Mr. Stamler and Mr. LaVecchia and tell them to present to the Court a regular petition for the Court's approval" that I could entertain it in the suit which had then been begun. I directed them further to have the receivers prepare an order to show cause why the offer of twenty

dollars should not be accepted. That is all that occurred. I was informed by Mr. Whitehead and by the receivers that the offer was not presented, that they did not follow my instruction. The report came from Passaic that the reason they did not do it was because I had treated them abruptly and all I had told them was I had nothing to do personally with approving the sale and directed them in the course which they should take. That is a matter that happened before me.

Mr. Ruback: May I point out a slight inaccuracy? I do not think your Honor intended to say it. You said, twenty minutes after the receivers left that morning these gentlemen from Passaic came with this resolution. I think you meant twenty minutes after counsel left. The receivers were not there that morning.

The Court: Twenty minutes after Mr. Ruback left.

Mr. Ruback: I telephoned to the receivers from Allenhurst within half an hour after your Honor made the appointment. I was there alone that morning.

Q Mr. Stamler, with the exception of the fact that the Hobart Bank was closed, the other assets of the company were about the same as they were when you left the presidency? A They were worse because the Lebanon Bank was in the portfolio.

Q You stated before at the time you left the presidency there was a contract to purchase the Lebanon? A Yes, sir.

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Q So the condition was about the same, was it not? A I don't think it was the same.

Q You had an idea, as I understand that they could have rescinded that contract? A Yes, sir; I think it should have been rescinded even if they had to pay more money to settle it.

Q And, Mr. Stamler, as of September 28th and June 29th the assets of the Hobart, in volume, were about the same? A I don't get the dates, sir.

Q When you left and when you were appointed? A There was a shrinkage of over a million and a half dallars.

Q Of assets? A You mean capital assets?

Q Yes. A They were about the same.

Q They were there in quantity? A Yes, sir.

Q Now, in quality were they the same? A No, sir.

Q What was the difference? A The bonds had been sold. The liquid assets having been sold in order to be able to keep the bank going and the money was put into slow notes.

Q But, as you stated, that was in much better condition in 1929 than it was in 1928 when you assumed the presidency, because you made Mr. Weinberger put in half a million dollars in the Hobart? A Yes, sir; the bank was, yes, sir; that is correct.

Q So with the exception of the Lebanon, whether they were in better position with the contract to purchase or whether they were better off by having this stock, with the exception of those assets of the New Jersey Bankers, they were about the same, is that correct? A Yes, sir.

The Court: You mean in amount or in quality.

The Witness: In amount, sir. We are speaking of the amount now.

Q And in quality, the assets of the New Jersey Bankers with the exception of the Hobart being closed, the rest of the assets were about the same in quality as well as in quantity, is that correct? A Yes, sir; outside of the Lebanon bank.

Q At the time the offer was made of ten dollars, the condition as I understand it, was very urgent, wasn't it, to sell that bank, because the bank was closed? I mean the Hobart bank now. A Naturally it was urgent.

Q You didn't have any time to investigate the offer, did you? A We did investigate it very casually.

Q You had no time to go out and sell the stock in the open market, did you? A Oh, no, sir.

The Court: There was no open market for anything just about that time. It meant either to sell and open the bank or that the bank be liquidated and nothing left, or very little left for the stockholders. It was double pressure at that time.

Q Now, after you became—after you were appointed permanent equity receiver on August 8th you carried on an investigation, didn't you, with reference to the Hobart sale? A I did.

The Court: Won't you finish up this sale at $14?

Q What happened after an offer was made of ten dollars? A The receivers worked on the problem and finally procured an offer of fourteen dollars and recommended it to the Court.

The Court: The offer of ten dollars was presented to the Court on the return day?

The Witness: And the Court refused to confirm it.

The Court: And then the receivers succeeded in getting fourteen dollars.

The Witness: That is correct, sir, and we recommended a sale to the Court.

The Court: In fact, every one before the Court of any interest recommended the sale.

The Witness: Yes, sir.

The Court: Mr. McGinnis, representing the Weinberger interest recommended it in open court.

The Witness: Yes, sir.

Q Do you recall how much the New Jersey Bankers Securities paid for the Hobart? A I think over eighty some odd dollars a share.

Q About twenty four hundred thousand? A Eighty-two dollars a share.

Q In total how much did they pay for it? A $2,478,000.

Q How much did you realize at fourteen dollars, about $400,000? A I do not recall the exact figures. Multiply it.

Q This was a loss immediately to the New Jersey Bankers Securities of about $2,000,000. Now after you were appointed equity receiver —(interrupted)

The Court: Immediate loss to the New Jersey Bankers when the Hobart Trust Company closed its doors, the day before the filing of the bill.

Mr. Glauberman: I am not trying to say that the receivers caused the loss. I want the fact that there was a loss of $2,000,000.

Q Then after you were appointed permanent equity receiver on August 8th you carried on certain investigations. Will you please tell us briefly what the investigation disclosed concerning the Hobart sale made by the receivers?

Mr. Ruback: I object. I do not think that is within the scope of this inquiry. I do not think it is proper cross examination.

The Court: You may put the whole record in.

Mr. Glauberman: I do not want the whole record.

The Court: I do not think that any of that examination relates to the sale that took place in open court. It relates entirely to efforts made by Mr. Hughes and his group to purchase the shares of the Hobart owned by the Bankers. That is all.

Mr. Glauberman: I want to give you my reason why I want to continue that line of examination. It is our contention that we have a cause of action against certain individuals and if a statutory receiver is appointed and the board is dissolved they are enjoined from doing anything. We cannot proceed against them. We also contend that this is of potential value to the stock-

holders of the New Jersey Bankers, that cause of action against those individuals. Our contention is that the investigation disclosed enough facts to give us, the New Jersey Bankers, a cause of action against certain individuals and by appointing a statutory receiver and dissolving the company we will be prevented as a company from bringing that action and that that will be a great loss and that that will be a great loss, and I would like to bring up for your Honor's consideration the fact that these potential assets may be recovered if the New Jersey Bankers is permitted to continue to function.

The Court: Objection sustained, not because I want to rule out anything, but it has no bearing. If I return the property to the corporation, the corporation may act, and if I appoint the receiver, he is the corporation and has the same right as the corporation would have.

Mr. Glauberman: May I say a word to your Honor on that point. It is our contention if the Court please, that the receiver may be estopped, while we will not be estopped. That is another phase of this matter.

The Court: The receiver stands in the light of the stockholders. Objection sustained.

Mr. Glauberman: May I ask Mr. Stamler a question—a statement he made in open court with reference to that investigation on February 4, 1930?

Q Mr. Stamler, do you recall on February 4, 1930, you made this statement in open court. "The receivers in the matter of the New Jersey Bankers & Securities Company have completed an examination of a number of witnesses and the evidence tends to disclose facts to the effect that a group of purchasers who had purchased securities from the receiver in accordance with the order made by the Court, did not act fair and honorable, but mislead the receiver and the Court for the purpose of making the sale of said securities."

Mr. Ruback: I object. I do not think the question is at all pertinent.

The Court: Objection sustained.

Q Mr. Stamler, you yesterday testified that your advice was, when you were president of the New Jersey Bankers & Securities Company, that they should put in, if possible, all the assets into the Hobart, so that the New Jersey Bankers then would have one good big bank with a big surplus. Is that correct? A I didn't use that language.

Q Any language. A I said that all the assets—(interrupted).

The Court: What he said was that the Bankers owning three-quarters of the stock of the Hobart should have sustained the Hobart by its funds.

Q Now, you testified yesterday that the assets of the New Jersey Bankers was about the same in July 25, 1929, as they were September 1, 1928. Why didn't you, Mr. Stamler, as receiver, put in those assets in the Hobart Bank and save it?

Mr. Ruback: I object, because it involves a statement that the witness did not testify to. He said they were the same in quantity.

The Court: Wait. And furthermore the Hobart was in the hands of the State Government, closed, and the Bankers was in the hands of the Court. Mr. Stamler had no authority to do anything except as the Court directed it. He was not statutory receiver. He did not have any authority under the statute. Whatever power he had was under the Court. Objection sustained.

Q Did you file any petition with the Court?

The Court: The record will show. The record is in and the record will show.

Mr. Glauberman: May I ask him whether he did or not, if your Honor please?

The Court: The record is in and the record will show.

Q When you assumed control as receiver on July 25th and August 8th, at that time there was no functioning board, is that correct? There was no functioning board of directors of the New Jersey Bankers? A No.

Q The only ones that were left as directors were Senator Edwards and Mr. Stafford? A Senator Edwards was in Europe.

Q Do you know when he returned? A He returned some time in September.

Q Mr. Stamler, are you familiar with the condition of the New Jersey Bankers after Mr. Jelin left around April, from April to July 25, 1929? A Only as I read from the minutes—read the minutes of the corporation.

Q Do those minutes disclose any reat activity on the part of the New Jersey Bankers?

The Court: The minutes are in evidence?

Mr. Ruback: They are in evidence.

Q Mr. Stamler, after you sold the Hobart did you sell any other bank stocks? A Yes, sir.

Q You sold the Perth Amboy, you sold the Lebanon? A Yes, sir.

Q And a few others? A Yes, sir.

Q And you realized cash? A Yes, sir; all for cash, excepting a little money still due on the Lebanon sale.

Q And you reduced practically most of the frozen assets into cash? A Yes, sir.

Q And you invested that in bonds or kept it on deposit in the bank? A That is correct; subject to the order of the Court.

The Court: In what bonds?

The Witness: We have municipal bonds, sir, that we have purchased subject to temporary loans of municipalities; all money was in bank on certificates of deposit bearing interest at the rate of four per cent. The moneys are kept in the Federal Trust Company.

The Court: They are liquid?

The Witness: They are liquid. Federal & Merchants. We have a small account in the New Jersey National Bank where only the income is being deposited and the expenses paid therefrom.

Q How much have you in the Federal Trust and the Merchants? They were designated as depositories? A Yes, sir; one more bank, sir.

The Court: The New Jersey National Bank was a depository.

The Witness: That is correct. There is one more bank we have money in, the Citizens National Bank of Perth Amboy. We have money on certificates of deposit there.

Q You did not, as receiver keep on buying and selling stock for the New Jersey Bankers, did you. A We didn't do anything except conserve the assets.

Q And liquidate? A And liquidate.

Q Those things which you say were frozen? A That is correct.

Q On March 7, 1930, you as receiver, together with Mr. La Vecchia sent out a letter to the stockholders and a financial statement. I show you that letter and statement and ask you whether that statement of March 7th is a correct statement of the financial statement of the company as of that time, March 7, 1930? A Yes, sir.

Mr. Glauberman: I offer it in evidence.

(Paper marked Exhibit D. 1.)

Q You show on that statement of the quick assets of the company consisting of demand deposits, time deposits, municipal bonds, other stocks and dividends and interest accrued, balance due account of sale of Lebanon National Bank, total $1,703,101.08? A That is correct, sir.

Q And other assets undetermined carried on the books at a value of $2,413,618.35? A Undetermined assets.

Q That includes Harry Weinberger's note of $2,300,000 which is secured by $450,000 guar-

tees by the directors and 1,000 shares of Hobart —(interrupted).

The Court: It is all there.

Q The liabilities—

The Court: You have it all on that statement. Ask him whether there is any change.

Q Is there any change in the condition of the New Jersey Bankers from March 7, 1930, to the present date? A Substantially not. We have more cash on hand, we collected it, and interest that accumulate is more than sufficient to pay the expenses that we are now under.

Q And the claims against the New Jersey Bankers are enumerated there—listed in this statement? A Substantially, that is correct.

Q Which are, first, $67,000 which is in dispute, and John Warren's claim in litigation, $306,-108.66? A We have other administration expenses which are still unpaid.

Q I am talking of those assets and liabilities? A No.

The Court: They are substantially the same?

Q They are substantially the same. Then there is enough cash as shown by this statement to pay any possible liability which this company owes now.

The Court: That is obvious. Do not take up the time.

Q This company was organized for what purpose?

The Court: It is already in.

Mr. Ruback: The charter is in evidence.

Q Mr. Stamler, you have had quite extensive experience in banks as well as investment companies? A I never had any experience in investment companies, that is not my line. We buy securities for banks in the ordinary course of business and buy in large quantities. We also advise our customers in buying bonds, but not in stocks. We are not in the stock business.

Q Could you answer this question? Assuming a corporation having 10,000 stockholders and has quick assets consisting of liquid cash of $1,703,000 and liabilities which are in dispute only of $373,000 and with a competent board of directors consisting of men who invested heavily in this company, would you say that a company of that sort could, under the present market conditions function properly? A No, sir.

Mr. Ruback: I object to that question because it assumes a number of facts that are not in the evidence.

The Court: I think the Court will take into consideration all of the other accompanying facts and I think Mr. Stamler will do the same thing. You are asking a question that the Court will have to answer. He has answered it. It is very helpful. Bring the other men. I am no banker. I must be informed. That is why you are here.

Q What is the answer, no? A Correctly, sir.

The Court: Will you restate the question and bring in all of the facts, all the circumstances or did you bring in all?

Mr. Glauberman: As far as I am concerned; yes, sir.

The Court: Objection sustained.

Q Why not, Mr. Stamler? A Because—(interrupted).

Mr. Glauberman: I want you to confine your answer to the identical question.

The Court: Oh, no. He will confine his answer to your hypothetical question. Why not?

The Witness: The reason is that your question does not disclose any definite plan of operation. If you, using the words "in the present market conditions" suggest by that that the money ought to be invested in stock speculation, I say no trust fund, which this is, whether it is in the hands of this court or in the hands of the board of directors should be subjected to such hazards, and no good business man will so say, that it is an honest business where honest profits may be made every day in the year.

Q I want to know whether you will change your answer if I will assume one additional fact. Assume that the board of directors themselves are not bankers, not men who know how to invest, but have invested themselves in this company, and they are determined to hire an expert, a man whom they will pay well, to invest, would your answer then be different? A You speak now in the stock market?

Q No, in banks—gilt edge securities. A When you speak of banks, stock or banks generally?

Q I mean in substantial stock as an expert would determine. A Without controlling the institution, simply buying stock?

Q Without controlling the institution? A Simply buying and selling stock.

Q Bank stock or other high class securities? A I still say that that money should not be subject to the risk because it is gambling in the highest sense.

Q In other words, your answer is that no corporation which is an investment company would be justified in risking the stockholders' money? A I say that no corporation who goes out to the public and collects money from the public with an idea that they are going to engage in the banking business and goes with that money into the stock market are committing a crime against the public. And that is what happened here.

Q Are you opposed to any investment company, Mr. Stamler? That there be any investment companies? A I believe in an investment company that Harry Weinberger had originally in mind, to buy controlling interest in the banks and devote there—and the management to devote its time to the management of the institutions they acquire. I think that basis is sound and it is a sound business. You can watch it, you supervise it and you have the profit arising from the ordinary business of the bank, but when you buy haphazardly fifty shares of stock here and ten shares of stock there and fifty, and sell tomorrow, and keep buying one to the other, it will eventually swap out—you are traded

out—the broker has got the profit and you have got nothing left.

Q Mr. Stamler, assuming that the board of directors engage an expert who agreed with your view and only invested the money in those banks in which they had control and manage it, what would your answer be then? A My answer would be that it is good.

Q Would be good. Mr. Stamler, how much would you say is the good will of the company worth that has $1,700,000 in cash? How much is the good will of a company worth that has $1,700,00 in cash? A It depends upon the company. What their function—how they are functioning.

Q How much would it cost to organize a company and raise it $1,700,000 in cash? A It depends on how many suckers you can get.

Q 10,000 in this case. A I think it would cost a great deal of money. Possibly cost half the money to raise it.

Q In other words, in your opinion this $1,700,000 of this company is worth about another half a million dollars? A My answer to it is, Mr. Glauberman, very clear—to make it very clear to you—to go out and raise money from the general public with a promise to do one thing and do something entirely different it is worth a great deal of money, but if you go out and raise money for a definite object, with honest management, it isn't worth very much until the money is collected and then they go into operation. In other words, a highly speculative corporation pays a great price for its money and an honest corporation pays very little for it.

Q Now, referring to Exhibit D. 1, the letter that you sent on March 7th, the statement? A That the receivers sent.

Q New Jersey Bankers. You also enclose a postal card. You recall that with that letter you sent out a postal card asking the stockholders to vote whether they wanted cash now or whether they wanted the money turned over to the present board of directors or whether they wished a new board to be elected. You sent it to all the stockholders, is that correct? A Yes, sir.

Q And every postal card had a number?

The Court: What was the returns?

Q And a return came back to the receiver, is that correct? A Yes, sir.

Q What was the result of that? A I don't remember the actual figures.

Mr. Ruback: Here is the entire file.

The Court: Put it all in.

(Paper marked Exhibit D. 2.)

The Court: Is that pursuant to the order to show cause?

Mr. Glauberman: No.

The Court: Made on the report filed by the receiver?

Mr. Glauberman: No. There was no order to show cause on that. Your Honor will recall it was a letter sent out with a postcard.

The Court: I have now in mind something that I did about this time, or before. The receivers filed a report, did they not?

Mr. Glauberman: No. This is the report filed, as I understand it.

The Court: No. They filed an account.

Mr. Glauberman: December 4.

The Court: And on that an order to show cause went out why the receivers should not pay a dividend.

Mr. Glauberman: Yes, sir.

The Court: And then that was followed by this questionnaire.

Mr. Glauberman: Not quite. After December 17th we appeared in court and this matter was adjourned until February 4th; on February 4th it was adjourned until the 28th. In the meantime you issued an order to show cause.

The Court: Let us get a more accurate record of that. The receivers filed their account, an order to show cause went out and upon the return of that order to show cause it was continued until—(interrupted).

Mr. Glauberman: February 4th. From December 17th to February 4th.

The Court: Upon your promise to hold an election.

Mr. Glauberman: That is right.

The Court: After the election you applied by petition to take over the new board of directors, and then what followed?

Mr. Glauberman: That was February 4th. Then your Honor, on February 28th, stated that you wished to have all the stockholders give their expression; then this letter went out and after that you sent out an order to show cause to all the stockholders returnable March 26th, why the funds should not be turned over to the present board of directors or any other legal board. Then after that there was a notice of election.

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The Court: That is the history?

Mr. Glauberman: Yes, sir.

The Court: The first order to show cause was at the Court's motion. Receivers had been appointed in July, the stockholders who were interested did not move. We had a large fund on hand and nobody seemed to concern themselves although the money belonged to the stockholders, so I, to get somebody moving, I directed the receivers to file their account and take this order to show cause, so it is still continuing—going on. All right. You want to question Mr. Stamler about anything more?

Mr. Glauberman: No.

The Court: Have you testimony?

Mr. Glauberman: It is our position we do not need any testimony. I am not going to rebut any of Mr. Stamler's statements. That is my present plan. I do not know what will develop after we finish some other witness.

The Court: I might say to you that the Court was in hopes that you would. You may follow your own plan. Purely technical, practically. You must carry your own case. I have been trying to carry yours and everybody else's, but I am not doing it now.

Mr. Glauberman: May I speak to your Honor—

The Court: No.

Q Now, after that, Mr. Stamler, an election was held pursuant to a letter and a notice that went out from the receiver's office? A In accordance with the order of this Court.

Q And a board of directors was elected at that meeting. A At which meeting you are talking about now?

Q At the meeting of April 17th. That was the date of the last meeting. A An election was held. Whether the board of directors was elected or not, I do not know. That is up to the Court.

Q I mean, an election was held. Are you holding now any assets of the company which you consider frozen? A No. They can all be liquidated in a very few moments, excepting the liability of Weinberger and the guarantors of the Weinberger note—on the Weinberger note.

The Court: How about the title company?

Witness: The title company, that can be liquidated also, Vice-Chancellor, in a very—(interrupted).

The Court: But at a great loss?

Witness: Yes, sir; very substantial loss, and it should be liquidated as speedily as possible.

Cross examination by Mr. Weinberger.

Q You just made a remark a moment ago that the Equitable Title would be subjected to heavy loss if liquidated. What do you mean by the amount of the loss—how much is it? A Well, I am comparing it, sir.

Q How much is the amount? A Just a second. I will tell you the story, if you will give me a chance.

Q I want to know the amount. A Give me a chance and I will tell you. We paid $159.43 for that stock. The stock will not liquidate for $100.

Q How do you know? A I went over the matter with your brother, had a whole afternoon session with him. We have a number of mortgages under foreclosure and renewal and the mortgages are for a period of years. There is a depression in the real estate market which necessarily will bring down the value of these securitis which you hold in that company.

Q Have you personally been down to see any of the real estate covered by any of the mortgages held by this company? Yes or no. A No, sir.

Q Do you know where the real estate is?

The Court: Do not say yes or no. Ask the question in the regular way and let him answer.

Q Have you seen any of the real estate covered by any of the mortgages? A I have not. I am relying entirely on the statement of your own brother who is a counsellor.

The Court: Now, Mr. Stamler, I will say the same thing to you. You answer counsel's question.

Q Do you know how many mortgages there are? A Yes, sir.

Q How many? A In round numbers fifteen which are—fifteen or eighteen which are free.

Q I will ask you how many are there in all, do you know? A I do.

Q How many? A I say I have the whole amount, but I haven't got it here with me. I have the whole picture of it.

Q Can you now tell us how many mortgages there are in all. A My recollection is fifteen or eighteen which are free. The rest are all secured for the bond issue.

Q That doesn't answer the number of mortgages which this company owns, Mr. Stamler. How many does the company own? A Possibly fifty or sixty all told.

Q That is a guess, is it not? A Yes, sir.

Q Since you have become receiver you haven't even found out the number of mortgages that this company owns and yet you say they ought to be liquidated. A That is not so.

Q What is the amount of the biggest mortgage? A I have no recollection—some running are high as fifty or sixty thousand dollars.

Q Don't you know there is but one mortgage of $75,000 and there is no $50,000 or $60,000? A I have the examiners' report and the reported condition of this company in my possession that Mr. LeVecchia has a copy of. He studied that and sat in conference discussing the matter a number of times.

Q Do you know there is a mortgage now held by this company of $75,000 which is being paid off by the Fidelity Union any day, possibly today? A Your brother told me that one will be paid off in the next couple of days.

Q Now, sir, will you state to the Court what mortgages are under foreclosure? A I haven't got the records before me, sir. I will have to refer to it.

Q Will you state the amount to the Court of the mortgages under foreclosure? A My recollection is they run over $50,000.

Q Is that a guess? A Absolutely a guess.

The Court: Mr. Stamler. did you know at any time what the amounts were?

The Witness: Yes, sir; I had it right before me. I am only guessing as to the figures, because I do not recall the exact figures.

Q Mr. Stamler, in answer to his Honor a moment ago—it is a fact you never knew so that you were not guessing as to recollection, but it is a fact you never knew? A That is not so.

Q It is not so? A No.

Q When was the first foreclosure instituted? A In December of last year.

Q Are you sure of that? A Yes, sir.

Q Which mortgages and what were the amounts? A I again tell you I cannot state without the record before me.

Q Well, now, Mr. Stamler, you have made several remarks to the purport that Mr. Harry H. Weinberger was behind the operation of this company from the day you went out, down to July, 1929, is that true? A That is correct.

Q Despite the fact that you put Mr. Jelin in with the Court's approval you still say he was not independantly operating and managing that company? A Correct, sir.

The Court: Why do you say "with the Court's approval"?

Mr. Weinberger: Because the papers went out with the Court's approval.

The Court: As to Mr. Jelin?

Mr. Weinberger: Yes, sir.

The Court: My order went out to approve any individual?

Mr. Weinberger: The letter sent out by Mr. Stamler recites the fact that your Honor approved of Mr. Jelin and was highly pleased with the fact that he was going to supervise the company.

The Court: Those comments are true, and I will reiterate them. But I have no recollection of making any official statement of that kind.

Mr. Weinberger: I am going to offer them in evidence, if your Honor please, all of them.

The Court: All right.

Q Now, Mr. Stamler, when you took the presidency of the New Jersey Bankers Securities the first official act of the stockholders was the writing of a letter dated July 30, 1928. Do you recall the letter? A I do not recall the letter. If I wrote letters they are there. They will speak for themselves.

Mr. Weinberger: I offer a letter in evidence.

(Letter marked Exhibit W. 1.)

Q Mr. Stamler, that letter of July 30th, which has been marked Exhibit W. 1 was followed up by another communication dated July 31st.

Mr. Weinberger: I offer that letter in evidence.

(Paper marked Exhibit W. 2.)

Q I assume you recall the letter? A Yes, sir.

Q In the letter of July 31st there was tabulated a statement of the assets of the company and its liabilities. Do you recall the letter, sir? A Generally.

Q The cash position of the New Jersey Bankers Securities as evidenced by your communication of July 31st was $752,694. I direct your attention to the item on the statement and ask you if that truly reflects the condition? A This statement is correct.

Q Thereafter you wrote the letter of August 23rd to the stockholders over your signature and I ask you whether you recall that letter? A That is my letter.

Mr. Weinberger: I offer it in evidence.

(Paper marked Exhibit W. 3.)

Q After the statement had been made, you and your five colleagues, or rather, you and your four colleagues resigned as directors of the company? A Correct.

Q And one of them remained, Mr. Jelin? A That is right.

Q You made a contract with him before you stepped out, did you not, assigning him to take all the management of the company? A Correct.

Q And agreed to pay him a salary of $7,500 each year? A That is correct.

Q On the 7th of September you addressed another communication to stockholders over your signature and I ask that it be marked in evidence, please? A Yes, sir.

(Paper marked Exhibit W. 4.)

Q Now, sir, in your testimony you have stated that the board of directors who subsequently took the directorate were all Mr. Weinberger's representatives. Did you mean that? A I mean that they are all your friends, yes, sir, outside of Mr. Jelin.

Q Did you know Mr. McCormick, did you know whether I knew him? A I don't know.

Q You said he was a friend of mine and do you now say so? A If he would stand up I would recognize him. I would refresh my recollection.

The Court: Is he in the room?

Mr. Weinberger: No.

The Witness: I do not recall him now. Let me see the letter and I will be able to refresh my recollection. Maybe I can remember some statement in there.

Mr. Weinberger: I think he worked for some estate in New York.

The Witness: I looked up Mr. John S. McCormick at the time, and you know him.

Q I am talking about friendship, not knowing him? A I do not recall that definitely how he came into the picture, but each man was looked up at the time.

Q Mr. Stamler, what I am attempting to do now is to correct the fact with regard to whether or not these men were known by Weinberger personally or were in any way controlled by Weinberger. You wouldn't give the impression now that any of these men were controlled by Mr. Weinberger, would you? A I will state now, if you will let me have this list—I will tell you my story quickly. I state to you now—repeat—that

at that time and up to the time that you and Mr. Roegner had the outs—had the falling out—(interrupted).

The Court: That is so indefinite. Give me the period.

The Witness: I will give you the period.

The Court: From when to when?

The Witness: From the time that the company was organized up to last July—until July, 1929, the following gentlemen were controlled by you. They were Senator Edwards,—(interrupted)

Q Controlled by me, you say? A Mr. Stafford, Mr. Roegner, Dr. Armstrong, Ross and my recollection is Mr. Morrissey.

The Court: You mean controlled or influenced?

The Witness: Well, influenced. I meant by that, influenced by Mr. Weinberger—as well as Justice Minturn.

Q When you used the word "influence" what do you mean by the term? A You have a wonderful personality to impress yourself upon —(interrupted)

The Court: What is that?

The Witness: I think you have a wonderful personality. You can impress yourself upon certain people.

Q Mr. Stamler, I direct your attention to this paragraph of that communication and ask you whether it accurately sets forth facts which

the stockholders were entitled to know. "The names submitted to the Vice-Chancellor were carefully considered by the board and the Vice-Chancellor knew a number of them and expressed his approval of the selection and particularly the selection of Mr. Abraham Jelin who is one of the New Jersey State Highway Commissioners, a member of the board of directors of the New Brunswick Trust Company and also the Broad & Market National Bank & Trust Company. Before relinquishing my office as president of the New Jersey Bankers Securities Company it was my aim to select a man of Mr. Jelin's ability to assume charge of the affairs of the company and handle its finances. It was only after a great deal of persuasion on my part that I was able to procure Mr. Jelin's services on behalf of your company and in relinquishing my office of president of the company I think I can do so with safety to the stockholders." Did that reflect the true situation? A Absolutely.

Q Every man then was approved by you and your colleagues? A Absolutely.

Q And you had implicit confidence in their integrity and in their honesty? A Yes, sir; and in yourself, too, at the time.

Q But did you think for a moment that those men were to be influenced by anyone other than their own independent honest judgment? A I thought at that time that they had learned a lesson.

Q Mr. Stafford was not on the previous board or boards, was he? A No, sir.

Q Mr. Ross was never on the previous board, was he? A No, but he represented your interests.

Q When you say that do you mean that he was put on the board to vote as he thought or as I thought? A I thought he was going to be put on the board to vote as he thought, and he did vote that way, and finally he was let out.

Q He voted what way, do you mean? A The way he wanted to vote. He always took sides with the problems.

Q What do you mean by being let out? A He was one of the persons *non grata* because he didn't get along with your ideas. Mr. Ross and Mr. Jelin and Mr. Evans and Mr. Veghte were the three members or four members who were constantly battling—(interrupted)

The Court: Is this interesting? It may be generally interesting.

Mr. Weinberger: If your Honor please, this is the theory I am offering these communications on. It is my contention and will be my contention in this case that when Mr. Stamler a moment ago spoke of a policy to run the company and acquire members on the board, I shall argue that merely putting a man on a board despite the fact that he may be 100 per cent honest in his viewpoint, honest in his actions, is not the barometer or determining factor as distinguished from a man financially interested.

The Court: That is *res adjudicata.*

Mr. Weinberger: Then I won't press it.

The Court: You may press it gently.

Q Now, Mr. Stamler, it is true, is it not—(interrupted).

The Court: I was pleased with the board and with Mr. Jelin. I repeat it. Fine man,

capable. These men did not get along. Something went wrong.

Q Now, you knew at the time, did you not, that when Mr. Jelin stepped into this picture that there was the ownership of the Lebanon Bank, the Perth Amboy Bank and the Hobart Trust Company involved. A All except the Lebanon.

Q The Lebanon at that time having been under contract of purchase, the other two banks already in the treasury of the company. This is correct, is it not, the ownership? A That is correct.

Q You knew that it required some person with banking ability to run those banks in order to be on the directorate, didn't you? A Yes, sir.

Q Who did you put in charge of that office? A Senator Edwards, otherwise he would not have been on the board.

The Court: Senator Edwards on what?

The Witness: On the New Jersey Bankers. He became the president and leader of the group.

The Court: He was asking about the banks.

Q I am speaking of the banks or bank. A I am speaking of the Bankers.

Q Let us see. Did Senator Edwards on your minutes anywhere agree to take supervision of the bank? Yes or no, please. A Yes, sir; he became president of the institution.

Q Of the New Jersey Bank Securities? A Yes, sir.

Q But did he take the presidency of the bank? A He did not.

Q By what authority has the president of the New Jersey Bankers to interfere in the operation of a bank? A He was also a member of the board of directors of the Hobart Trust Company.

Q Don't you know that he was not? A I do not.

Q The fact is, Mr. Stamler, he was not. I beg your Honor's pardon. Now, Mr. Stamler, did Mr. Jelin know anything about the management of banks? A No, sir.

Q Well, now, from September when you stepped out and Mr. Jelin stepped in, down to April, do you know how the company ran along? A All I knew is what I was told.

Q Did you know—only what you were told. Who told you? A Mr. Jelin from time to time would tell me what was going on.

Q Did you know what he was trading in? A Generally, not—(interrupted).

Q Did you know what he was buying? A No.

Q Did you know what he was selling? A No.

Q Did you know anything about the financial structure of the company from September down to April? A No, I did not.

Q Did you know about the—currently, I am speaking. A No.

Q The first real breach which came into existence was with regard to the Equitable transaction, was it not—that was the attempted sale of the assets of the New Jersey Bankers Securities—of a majority part of them—to the Equitable Finance Corporation of New York; is that right? A I considered the first breach was when Mr. Roegner tried to buy the stock of the Hobart. That I considered the most important breach of your company.

Q By that you mean Mr. Roegner's statement at a meeting held of the New Jersey Bankers where he said he wanted a brokerage to make the sale? A Didn't want a brokerage, he said, "This bank cannot be sold unless I get this and not otherwise." That is when the danger point came.

Q No one approved of that statement? A I said you did not approve of it.

Q I said no one. A I don't know about no one.

Q You personally thought it was wrong and so stated, didn't you, to him? A Yes, sir.

Q And so did Mr. Weinberger? A Mr. Weinberger didn't take part, but he didn't approve of it. He so told me.

Q The fact is Mr. Weinberger objected to the sale on the ground that it ought to bring more than sixty dollars which was the then offer, isn't that the fact? A You opposed the sale of the Hobart unless you could get a substantial sum of money beyond the price offered, which I also told you was wrong, that the fifty dollars or fifty-five dollars should have been taken.

Q Now, as a matter of fact, Mr. Stamler, the Equitable transaction came along and you did not approve of that? A Generally speaking, I did not approve of it.

Q And Mr. Jelin didn't approve of that? A That is right.

Q Do you know that at the outset that he did approve of it? A I did not know that.

Q You were told so by me, were you not? A You told me that.

Q And did you also know of the fact, and I also told you, did I not, that the Equitable deal was brought about because you— (Withdrawn.)

It is a fact, is it not, that I told you that the Equitable deal was consummated through my friend—through your friend, Mr. Wells? A No, sir; that is not a fact at all.

Q You didn't know that? A No. You told me that.

Q That is not so? A No.

Q Do you know Mr. Wells? A I do.

Q How long? A Oh, thirty-five years or more.

Q A member of the bar in New York? A Yes, sir.

Q Do you know he was the man who negotiated the Equitable transaction? A You told me that.

Q Didn't he tell you that?

The Court: Is this of any interest to me on this issue?

Mr. Weinberger: Only for this purpose. If you are satisfied about the collateral I will stop now. The record seems to be silent as to that. If we can establish the fact that Mr. Stamler precipitated the sale and that nobody had any motive other than that the merger was the only salvation—(interrupted).

The Court: I think that generally is so with a single exception. Suspicion was aroused because of your control of that contract, controlling it, as alleged with the intent to relieve yourself and the guarantors of the $2,300,000. I think that is all, otherwise it was an effort made to do the best they could. I do not know. I did not approve of it.

Mr. Weinberger: I know that.

The Court: I did not approve of it at the time and said I would hold it until final hearing. Is there anything you want to dig out of that that will help me?

Mr. Weinberger: I am going to leave that with you because your Honor has it in mind.

Q That precipitated trouble in the company with regard to Mr. Jelin, the Equitable deal did, and some of the co-directors, did it not, and was the result of this litigation which ensued. A Yes, sir.

Q And that resulted, of course, in the eventual resignations of Messrs. Evans and Vechte. A Ross and Jelin.

Q Ross and Jelin? A That is all.

Q Mr. McCormick—there is a written resignation. A I do not remember that.

Q When Mr. Elliott was suggested to take charge of the bank of Passaic, the Hobart Trust Company were you conferred with about that? A I suggested that to Senator Edwards, to get a man in the bank as speedily as possible to assume the management of the institution and the first time I met Mr. Elliott was the night when the Bank Department in January attempted to close the bank. I didn't know anything about the gentlemen at all.

Q Mr. Stamler, do you know Mr. Jelin made the choice of Mr. Ross? A I don't know that, Mr. Weinberger.

Q Coming back to the Lebanon now, for a minute, you testified yesterday that Mr. Weinberger was instrumental in negotiating for an option of the Lebanon National Bank. Have you since learned that that was inaccurate? A I

said you had purchased—made a contract to purchase stock in the Lebanon Company, and as I understand it correctly the minutes so speak of it, because it says in the minutes—(interrupted).

Q Negotiations of the option of sale?

The Court: Option of sale of what?

Mr. Weinberger: Of the Lebanon.

The Court: To purchase?

Mr. Weinberger: He intimated that the Lebanon Bank was sold to Mr. Reilly and Mr. McMahon.

The Court: Had you that in mind?

Witness: No. I thought when he bought it.

The Court: Strike the question out.

Q Mr. Stamler, with regard to the sale of the Lebanon Bank, you testified yesterday—(interrupted).

The Court: Sold it?

Witness: No. McMahon and Reilly—(interrupted).

Q Speaking of that sale, sir, you testified yesterday that that was negotiated through Mr. Weinberger. Have you learned of the fact that that was inaccurate? A Only what you told me today, Mr. Weinberger.

Q You know now whether—(interrupted). A I do not. The only thing I knew about it was Mr. Wells was counsel for the Bankers, told me that you sent Reilly and McMahon there for the purpose of having this deal consummated.

Q Now, Mr. Stamler, do you know, as a matter of fact that Mr. Reilly and Mr. McMahon

were introduced as prospective buyers by Mr. Richmond, the largest stockholder of the Lebanon National Bank? A You told me that this morning, Mr. Weinberger.

Q But you didn't know whether that was a fact or not? A No.

Q Did you know of the fact that they went to the Lebanon board before they approached the New Jersey Bankers board? A I do not.

Q Do you know, as a matter of fact, they came to Jersey City and interviewed there the entire board of directors including Mr. Jelin? A I don't know that.

Q Do you know Mr. Jelin in writing approved of that proposed option? A I don't know that.

Q And do you know as a matter of fact that thereafter you were called upon to get them out of the option because of the question as to whether these men could go through with the deal? A That was after we were receivers. Mr. LaVecchia and I made the investigation. We knew nothing about it until after we were appointed receivers.

Q Now, Mr. Stamler, Mr. McMahon was, was he not, an official of one of the banks in Brooklyn at the time he made this deal? A No, sir.

Q Do you know whether he was the first vice-president and active manager of the Union Bank in Brooklyn? A That failed and was almost ruined.

Q What? A That bank had heretofore failed and was almost ruined.

The Court: Answer the question. Did you know?

The Witness: I knew that he was not at that time.

Q He was not? A No.

Q You say at the time he got the option he was not the active vice president of the Unity Bank of Brooklyn? A Correct, sir.

Q Now, Mr. Stamler, may I go back to the letters. I want to know whether that letter was written by Mr. Jelin—not by you. A I would have to read it. If I saw it—I don't know.

The Court: Do you identify it?

The Witness: I don't know whether Jelin wrote it or not. I didn't write the letter.

Q It is one of the official letters of the company and signed by Jelin.

Mr. Ruback: No objection.

Mr. Weinberger: I offer it in evidence.

(Paper marked Exhibit W. 5.)

Q The Perth Amboy National Bank. There was an option on that bank, was there not, before you sold it? A Yes, sir.

Q How much was it sold for under the option? A It wasn't a sale, it was an option, turning over the bank for $250 a share, giving somebody a year's time to determine whether they wanted to buy or not.

Q Who was the somebody? Was it composed of the then board of the Perth Amboy National Bank? A Yes, sir; the then board.

Q And is it a fact that that bank was sold to the same group who had the option for about $80,000 less? A No.

Q What is the fact? A The fact is that only two of the same group remained and others went into it.

Q Who were the two? A The two were Mr. Van Syckle and one other man, Jewish gentleman. I have forgotten his name.

Q Spitzer? A No. This option they had —(interrupted).

Q Mr. Van Syckle was on the option, was he not? A I said two names.

Q He was the main man on the option, wasn't he? A No, sir.

Q Wasn't he president of the bank? A No, sir; he was not. He is now president.

Q What was he then? A He was only on the board.

Q Chairman or president? A He is now president.

Q What was he then? A On the board of directors only, that is all.

The Court: What interest is this to me? That whole thing was before the Court at the time. I was asked to approve without notice to the stockholders and I suggested that they had a right to be heard and that order to show cause went out much against the judgment of the receivers and their counsel for fear that that bank might be closed—might be a run on it. Those things you are now referring to may be important if you care to surcharge the receiver.

Mr. Weinberger: I think your Honor is right about that and I will not question any more.

Q Mr. Stamler, you were asked a few questions that I would like to get your reaction on, with regard to the future of this company possibly. Money especially capital has an intrinsic

value when put in proper hands, has it not? A Yes, sir.

Q More so today than it has been for a long time in the money market. A It was all the time so.

Q I mean especially so when you want money today. Now, sir, you make the statement that an organization contemplating a chain of banks would be an excellent investment possibly in the proper hands and under proper maagement. A Yes, sir.

Q Men differ with you on that and great financiers in this country, and say chain banking is not good and is not good ivestment. A Oh, no, not in the investment theory.

The Court: That does not help me at all.

Q Now, Mr. Stamler, where stockholders have made investments of their own and stand by and ask to have a company return so that their investment may be continued under management, would you say that those men should be denied that right just because you personally may not agree with the principle, that they ought to have their money—have the accounting? A No. Might is not always right.

The Court: He is not asking you about might. He is asking about judgment.

Recess.

Mr. Fitzsimmons: If the Court please, I would like to have my appearance noted on the record.

The Court: For whom?

Mr. Fitzsimmons: Mr. Green, who I represent as a stockholder and also my own interests as a stockholder.

The Court: Have you intervened?

Mr. Fitzsimmons: I filed a separate bill and I have appeared in this suit. I understand an order has been entered substituting Mr. Glauberman as counsel for the defendant company in the place of Collins & Corbin. I want to enter an objection to the appointment of Mr. Glauberman on the ground that there is no existing board of directors to retain his services and was not at the time he said he was appointed by Senator Edwards and Mr. Stafford. Two could not possibly constitute a quorum and secondly the new board, so-called, had no power.

HARRY H. WEINBERGER, sworn.

Direct examination by Mr. Ruback.

Q Mr. Weinberger, you are the Harry H. Weinberger who was the maker of the promissory note for $2,300,000 to the order of the New Jersey Bankers Securities?

The Court: Oh, yes.

Mr. Ruback: I want to identify him on the record.

The Witness: Yes, sir.

Q And what is your present business? A Practicing law.

Q In Newark? A Yes, sir; and Passaic.

Q And Passaic. Have you any other occupation? A One of the New Jersey Bankers. That looks like an occupation.

Q Have you any other gainful occupation? A None whatever.

Q Are you able, Mr. Weinberger, to tell us your personal net worth at this time?

Mr. Glauberman: I object and I would like to give my reasons why.

The Court: I want to hear first why he is introducing it.

Mr. Ruback: Among the assets possessed by these receivers is one which they have scheduled and Mr. Stamler has testified is of unascertained value, $2,300,000. It is so carried on the books of the company. If by competent proof I can establish that that asset has no value or a much reduced value, the amount of the reduction in the latter case and the whole amount of the note in the former case would be a loss in addition to that already proven. I propose by this witness to prove the maker's insolvency and his inability to respond in the amount of the note by proving what his net worth is. I can conceive of only one objection to this.

The Court: Let the other side do that.

Mr. Ruback: The question before the Court now is whether this company is insolvent or not. It is a question of adding up the assets and liabilities, I can appreciate that—but there is no question about the insolvency of that company. The question is, did it lose?

The Court: What is your objection? I do not want an argument.

Mr. Glauberman: My objection is this: The note is not due yet. What this man is worth now is no proof of what he will be worth later.

The Court: I think it is competent for this reason: It may show an additional loss to this company antedating the filing of the bill. The objection is overruled. I am wondering whether you cannot shorten it by just a single question, not by asking his assets and liabilities, and so forth, but whether he has the financial ability to pay. Mr. Weinberger will answer yes or no and that may end it. I am not going to permit you, if I can avoid it, to have supplementary proceedings now. I think by a single question he can probably elicit it.

Mr. Ruback: If the Court please, we have had the supplementary proceedings, an inquiry as to this gentleman's capacity to respond in the amount of that note. That testimony has been taken by your receiver and Mr. Weinberger personally has no objection to that testimony replacing his oral testimony.

The Court: Mr. Weinberger's own testimony?

Mr. Ruback: Yes, sir; taken under your Honor's order that the value of the assets be inquired into, and under that order we inquired of Mr. Weinberger as to his, in order to determine what value to allocate to that note of $2,300,000. I can save much time and labor if this testimony will be accepted in lieu of his testimony.

The Court: Show it to him.

Mr. Glauberman: I object to that testimony at this time.

Mr. Weinberger: I said to Mr. Ruback that I am not a party to this objection.

Q (Question read.) Are you? A I wouldn't be able to say right now; no, sir.

Q Are you able to state approximately your net worth at this time? A I am not.

Mr. Glauberman: I object.

The Court: Same ruling.

Q Are you able to state what your net worth —approximately what your net worth was in July, 1929? A Why, I couldn't tell you that.

Q Limiting and deducting the value of those of your assets—(interrupted).

The Court: Have you financial capacity to pay this note?

The Witness: No, sir. If there was liability on that note to exist; no, sir.

Q Now, outside of the liability on the note are you able to pay your debts? A Certainly.

The Court: Outside of that note you are able to pay your debts?

The Witness: Yes, sir.

The Court: Any surplus?

The Witness: Thank goodness I haven't many debts, Vice-Chancellor. I am speaking exclusively of the $2,300,000 note.

The Court: What are your resources in amount—collectible amount?

The Witness: I couldn't say because of the fact that it is a very difficult thing to estimate values at this particular time—real estate values.

The Court: Laying aside your liability on the note and laying aside whatever property you may have in the shares of this company, what are your assets and liabilities generally, particularizing them? I want to save you embarrassment.

Mr. Weinberger: Vice-Chancellor, I want to say I did not know I was going to be called for this purpose. I was just put on the stand—I would be glad to give you the exact figures. I cannot at this moment. I could get it in a matter of minutes from my accountant. I wouldn't want to say unless I knew. I did prepare for Mr. Ruback when I testified, a statement of all those items when the examination was held.

The Court: And has that testimony been transcribed?

The Witness: Certainly.

The Court: And would that help you?

The Witness: Yes, sir.

The Court: Give it to him, Mr. Ruback. Put your objection to my question, too.

Mr. Glauberman: I seldom object to the Court's questions.

The Court: You have the same right to object to my questions as those of counsel, if the objections are competent.

Mr. Glauberman: The objection to the Court's question, I think, is about the same as the other question. I object to any testimony as to Mr. Weinberger's solvency or

insolvency regarding the New Jersey Bankers Securities. That is my only objection.

The Court: Your assets and liabilities as a whole.

The Witness: He doesn't seem to have them in here.

Q The figures you seek are not in that testimony? Let me have that. A I do not find them in there.

Q Disregarding as items of value the shares of stock and other items that you have deposited as collateral to your note of $2,300,000, eliminating those, what is your net worth?

Mr. Glauberman: Same objection.

A The Vice-Chancellor asked me that. I said I couldn't answer it at the minute. I would be glad to give you the data, but I haven't got it here.

Q Do you know what the value of your assets in other than those you have deposited under that note amount to? A I do not know, not this minute.

Q Well, having—being mindful of that promissory note obligation of yours of $2,300,000 and the value of the collateral which supports that, and your other assets and your other liabilities, are you at this time solvent or insolvent?

Mr. Glauberman: I object to that question.

The Court: Objection overruled.

The Witness: Of course, you are assuming now that there is liability on the note.

The Court: Answer.

The Witness: If there is liability on the note there is no question about the fact that I would be insolvent.

The Court: To the extent of the note, practically?

The Witness: I would say that, if your Honor please, less the value of whatever may be there as collateral. There is 172,000 shares in the New Jersey Bankers.

Q And that was your financial condition last July? There has been no substantial change in your condition between last summer and today? A No.

Q You have no other sources of revenue but from your own professional labor? A That is all.

Q And no expectation except from your future earnings as a practicing lawyer? A Correct.

Cross examination by Mr. Glauberman.

Q Mr. Weinberger, at the time you gave the not of $2,300,000 was the collateral that you gave at that time worth the amount of the note?

Mr. Ruback: I object. It may have been worth fully 100 per cent. We are concerned here with losses, not concerned with a former condition which no longer obtains.

The Court: Answer.

The Witness: It was.

Q It was sufficient to pay the note? A It was, based on the calculations that Mr. Stamler

and I made at the time and the facts which were all considered in making up the obligations.

Q And the calculation was based upon the value of the shares which you purchased from the New Jersey Bankers Securities at the time? A They were one of the items.

Q You stated before if you had to pay the note today you could not meet it, is that correct? A Certainly.

Q You took into consideration the fact that the shares of the New Jersey Bankers now are not worth as much as it was September 1, 1928, is that correct? A Certainly.

Q Could you please tell us the difference in value between the 180,000 shares of the New Jersey Bankers Securities at this date as it was on September 1, 1928?

The Court: We can make our own calculations.

A The 172,000 shares were worth then, based upon the calculation which we considered at the time, at least $11, from a book value, and the added value of 172,000 shares because of the fact that it controlled the company would have made it worth in the neighborhood of around twelve or twelve and a half dollars a share, and the purchase price was fourteen and a half. Its relative value today would naturally be about 648,000 shares into approximately 2,000,000 or somewhere in the neighborhood of three and a half dollars.

The Court: You are getting pretty deep for me.

The Witness: That is quick. I haven't—your Honor, I haven't expected these questions.

The Court: How about the 1,700,000?

Q At the time the note was given—(interrupted)

The Witness: Pardon me. I said three and a half dollars. I think the Vice-Chancellor's correction is correct, I think it ought to be 648 into 2,300,000 plus 1,700,000 or 4,000,000. It would be about, in my opinion, about five dollars a share, because you have to credit the 2,300,000.

Q Mr. Weinberger, at the time the settlement was made between you and the New Jersey Bankers Securities do you recall the figures that showed a loss that resulted to the New Jersey Bankers Securities by reason of the purchase of the stock and the dividend that you declared—the re-purchase of the stock and the dividend that was declared? What was the amount? A I don't quite follow the question.

Q (Question withdrawn). There was a settlement made with you September 1, 1928, based upon certain acts done by the board of directors. One was the declaration of a dividend illegally. How much was that? A To be exact about $102,000.

Q And also upon the fact that the board of directors re-purchased certain stock—its own stock—at a figure much more than its worth. I understand that was the accusation. How much loss was that to the company? A Three hundred and forty some odd thousand dollars.

Q In other words the loss was about $300,000. In order to make good that loss you purchased $2,500,000 worth of stock. Is that correct? In other words? A 172,000 shares.

Q If you had at that time $300,000 in cash you would not have to purchase that stock for $2,500,000? A What do you mean?

Q If you had at that time $300,000 in cash to pay back to the New Jersey Bankers Securities by reason of the loss sustained by it, would you then have to re-purchase that stock? A Certainly not. If you paid the $300,000 loss you would put out—, that loss would be eliminated.

Q You would make the company whole by the payment of the $300,000.

The Court: Nothing of the kind. $2,500,000 of money paid in by the public and Mr. Weinberger instead of restoring that $2,500,000 to the treasury of the Bankers put his note in, which is not money.

Mr. Glauberman: If your Honor please, I believe I did not make myself clear.

The Court: I have that clear.

Mr. Weinberger: Your Honor, that is right. I did not answer that question.

The Court: I know you didn't.

Mr. Glauberman: I will put a new question. My point was in asking that question, the stock was worth a certain amount at that time. They could have gone out in the market and sold that stock.

The Court: They could not. I understand the book value was worth a certain amount. The book value and what the public is ready to pay for it under the cir-

cumstances under which this company was working at the time is entirely different.

Mr. Glauberman: They could have cancelled that stock, the company could, and they would have had the money.

The Court: They could not have cancelled the stock and had the money.

Mr. Glauberman: Exactly, because— (interrupted)

The Court: You think that over.

Q Now, Mr. Weinberger, how long are you practicing law? A Since June, 1909.

Q Where did you practice law? A In Passaic.

Q Since 1909? A Yes, sir.

Q What was your income, if I may ask, before you went into the New Jersey Bankers Securities —before you became a banker? A It was very substantial.

Q Was it more than $50,000 a year? A Yes, sir.

Q Was it more than $100,000 a year? A It was.

Q Was it more than $150,000 a year?

The Court: Please.

Mr. Glauberman: The question is the probabilities of this man to be able to meet the obligation, your Honor. Your Honor allowed the question and therefore I am trying to prove—(interrupted)

The Court: Ask the question. I do not want a speech every time.

Q Was it over $100,000? A It was.

Q Was it over $150,000 per year? A It was.

Q Was it over $200,000? A I can't give you the exact figures, but it ran around that.

The Court: From the law?

The Witness: From the law practice.

Q Now, Mr. Weinberger, were you actively engaged in the practice of the law the last year? A When I say "law practice" I am speaking of the law and its incidentals, if your Honor please, such as making investments for clients who come in on matters, not directly responsible to the law, but incidental, arising out of the relationship with the clients in the form of business ventures, whatever they may be. I do not want it to be recorded—(interrupted)

The Court: Your net income from the practice of law, not practice in real estate or engaging in other enterprises which you may have induced by reason of being a successful lawyer, but from the practice of law.

The Witness: I should say my practice ran invariably around $150,000 as a practicing lawyer of this state.

Q And you are now engaged in the practice of law in the city of Newark? A I am.

Q Have you a partner? A I have.

Q Who is your partner? A Justice Minturn, former Judge Minturn of the Supreme Court.

Q Have you been actively engaged in the practice the last year in the City of Newark? A I have.

Q Have you made—Can I ask you how much money you have made in the last year in the

practice of law? A You can ask me, of course, if the Court approves the question.

The Court: You can answer it.

The Witness: I did not expect to be called here as a witness.

The Court: I don't think you ought to ask for private affairs.

The Witness: I am a member of a firm. I do not think it is proper to disclose the firm's income.

Re-direct examination.

Q Those profession earnings you have testified to—(interrupted)

The Court: It has nothing to do with it. You do not want to go into the private affairs.

Mr. Ruback: I want to know if those are his personal earnings or the firm's.

The Witness: My firm.

Q Your firm? A Yes, sir.

Q When you say you have made $100,000 a year out of your practice, you mean Weinberger & Weinberger? A Yes, sir.

Q Your interest in the firm is what, one-half? A It varied along the line, but the last two years the maximum was 50 per cent.—no, the maximum was more. I wouldn't know what it was at the moment. It varied, the contract, and eventually my brother became a full fledged one-half partner. That ran along for a year.

Q That was the condition last year, 1929? A Yes, sir.

Arnold Markel, direct.

Re-cross examination.

Q If given an opportunity could you eventually meet the obligation?

Mr. Ruback: I object. That calls purely for a prophesy. Mathematical facts will speak for themselves.

The books of account are in evidence. Some of the exhibits bring the assets and liabilities of the New Jersey Bankers down to August 1st, the day of the hearing. The end of the fiscal year was August 31st. I have a resume of the books prepared by the same witness, Markel, for the year ending August 31st that reflects the Hobart transaction as a closed one. It had not yet been closed the day we were before you with the witness. I offer the transcript in eivdence.

Mr. Glauberman: I object.

The Court: Objection sustained. Can you prove it?

Mr. Ruback: Yes, sir.

ARNOLD MARKEL, sworn.

Direct examination by Mr. Ruback.

Q Mr. Markel, you were the regular auditor of the New Jersey Bankers Securities Company up to the time they went into the hands of the receiver? A My firm was, yes, sir.

Q Your firm. And your firm continued its auditing work for the receivers? A It did, yes, sir.

Q Did you from the books of the company make an audit and resume for the fiscal year ending August 31, 1929? A We did, yes, sir.

Q And did you certify it to the receivers? A We did.

Q Is this the report that you have reference to? A It is, yes, sir.

Q And was that made up after the sale of the thirty thousand some odd shares of the Hobart Trust, was actually completed? A It was.

Q And does it reflect the sale? A Yes, sir, this report reflects the sale.

Mr. Ruback: I offer it in evidence.

Mr. Glauberman: I object to any figures or transactions after the bill was filed by the receivers as incompetent and immaterial.

The Court: Objection overruled. It was figured on the basis of book entries?

The Witness: Yes, sir, they are.

The Court: When I speak of book entries I mean entries in the books of the New Jersey Bankers Securities Company.

The Witness: The figures are as the books show for the fiscal year of August 31, 1929.

Cross examination by Mr. Glauberman.

Q The receivers came in on what day, as you recall? A July 25, 1929.

Q No business was done between July 25th and the end of the fiscal year, is that correct? A Well, they continued the same general run of things. They had a number of securities and

they had a few expenses; they had an office. I don't know what you mean by any business.

Q I mean, they did not go out and buy securities in the market.

The Court: Not cross examination. It is confined to what he found in the books.

(Paper marked Exhibit C. 12.)

CATHERINE MATEY, sworn.

Direct examination by Mr. Ruback.

Q You are in charge of the office of the New Jersey Bankers Securities Company at the Military Park Building, this city? A Yes, sir.

Q Employed by the receivers? A Receivers.

Q And you have been so employed since their appointment last July? A Yes, sir.

Q At that time you were the secretary of the company? A Yes, sir.

Q Has Mr. Edwards—Senator Edwards been to the office since last July? A Not since he left for Europe last July.

Q How many directors has the company at this time? A Two.

Mr. Glauberman: I object. That evidence has been in on August 1st before your Honor. The evidence is all in.

Mr. Ruback: I want to show no change since last summer.

Q Has there been any change in the number —personnel of the directors of the company since you last testified in this case?

Catherine Matey, cross.

Mr. Glauberman: I object.

A No.

The Court: Objection overruled.

The Witness: Only the number who were appointed by the stockholders a month or so ago.

Q You have now reference to the recent efforts to elect a board of directors? A Yes, sir.

Q So that of the old board of directors there are only two who have never formally resigned? A Yes, sir.

Q They are who? A Senator Edwards and Mr. Stafford.

Cross examination by Mr. Glauberman.

Q You were the secretary for the company July 25, 1929? A Up until the time the receivers were appointed.

Q Were you served with an order to show cause why the receiver should not be appointed by Messrs. Leber & Ruback? A I was not.

The Court: Objection sustained. Not cross examination.

Q Miss Matey, you have been working for the receivers since last July? A Yes, sir.

Q And the receivers, as you know, are under the—(interrupted)

The Court: Not cross examination.

Q Miss Matey, did you have instructions from the receivers not to give information to anybody except the receivers?

Mr. Ruback: I object.

The Court: Not cross examination. Objection sustained.

Q Miss Matey, do you know how many directors there are now of the company?

Mr. Ruback: Legal question.

The Court: Objection sustained.

Q Miss Matey, you don't know whether there is a board of directors now or not? A I know there is still two of the old board.

Q You don't know whether the new board is properly elected or not, do you? A To my knowledge, no.

Q Do you know or don't you know? A No, sir.

Mr. Ruback: We rest.

Mr. Weinberger: May I ask Mr. Markel be recalled to ask a few questions?

ARNOLD MARKEL, recalled.

Cross examination by Mr. Weinberger.

Q Mr. Markel, in the statement which has been offered in evidence marked Exhibit C. 2 I notice that you have the item—there appears the item in red type "Operating loss $2,029,-253.33." Are you familiar with that item and that language? A Yes, sir; I am.

Q How is that operating loss made up? A Well, that is the net result of the transactions of the year.

Q Well, how is it made up?

The Court: Which year?

The Witness: For the year from September 1, 1928, to August 31, 1929. That is the second fiscal year of the company.

Q How is it made up? A Well, it is made up of two items. Income consisting of dividends on investments and interest earned.

Q The operating loss? A Wait a minute—And from which is deducted operating expenses including an item of loss on sales of securities. The income is $65,603.01. The total operating expenses, including this loss on the sale of securities is $2,094,856.34, the difference being operating loss of $2,029,253.33. The item of loss on sale of securities totals $2,006,667.33, and the total expenses—operating expenses of $2,094,-856.34.

Q The item of loss on securities was on what sale? A Well, there is a subsidiary schedule attached and it shows a profit on the sale of a number of scattered stocks.

Q I am speaking of what is the loss made up of? A It is made up of the total transactions during the year; in other words, shares of stock bought and sold.

Q What were they, the losses? A The net loss is $2,006,667.33.

Q And the items are what? A And the items are a loss on the Hobart Trust Company sale of $2,050,377.09, less profits on various other sales during the year of a total of $43,709.76.

Q So that according to this statement there was an operating profit realized from the sale of bank stocks amounting to $43,709.76, is that

right? A Well, the statement shows that of the various items sold that there was $43,000 profit on the items other than that Hobart Trust Company.

Q The fact of the matter is you have a schedule marked here Exhibit B, Schedule 2, showing profit and loss statement of securities, is that right? A Yes, sir.

Q And there are, in all twenty-three items, are there not? A Approximately, yes, sir.

Q And of the twenty-three there is a profit on twenty-two of the items showing a profit on securities for the year of $43,709.76. A That is right.

Q There was a profit on every item that the company owned and sold. A Except the Hobart Trust Company.

Q And the only loss shown was the loss of the Hobart Trust, is that right? A Up to that time, yes, sir.

Q And that was $2,050,377.09, is that correct? A That is correct.

Q Now, as a matter of fact, Mr. Markel, you have charged this company with certain items of expense for the fiscal year ending August 31, 1929, and amongst those items I direct your attention to the following "Legal and professional fees, $22,697.73." A That is right.

Q Can you tell us what those items were made up of? A They were made up of legal and professional fees.

Q To whom were they paid and in what amount, do you know? A I can't say offhand. They were paid to attorneys.

Q Attorneys. You have an item $4,980 for directors' fees. Was that only for that period of time, September, 1928, to the first of August,

1929? A These are directors' fees paid out during that time.

Q You have an item transfer and registration fees, $9,493.33. That was for items of transfer of the stock of the company, was it not? A Yes, sir.

Q Those were all non-recurring items, legal fees, the registration and transfer fees and directors' fees. A I wouldn't call them non-recurring in the sense they may not come—they may come up again.

Q Have they come up since this statement was made up, outside of legal fees, possibly? A Legal fees may come up again. As far as transfer, that depends on how many people are buying and selling stock.

Q Taxes, $2,360.65. What were those taxes on, do you know? A Probably local taxes—New Jersey taxes.

Q State franchise? A State franchise; wouldn't be any Federal tax. That would be on income. There wasn't any.

Q I direct your attention to the fact you have an item here, "Amount forfeited by subscribers on subscriptions cancelled, $112,445.24." How do you classify that? Does that go to the company as an asset or do you take it as a liability? A That item has been—after we set up this operating loss we deducted from the operating loss this item and cut down—I set up a net figure, after which we added an item marked "expense" applicable to periods prior to September 1, 1928, paid subsequently, and then we came down to a net loss of $1,952,585.52. This item of forfeiture by subscribers, that was up for discussion before. There is a question as to whether that is a capital credit or should be handled as

an—in the nature of a steady income item. It is purely a matter of two theories on the subject.

Q What I am trying to find out is, how did you treat it? Did you treat it as a steady—(interrupted). A We treated it as an item—after showing operating losses we put it in as a subsequent item of operation, not a part of the operation at all. We simply took, after we arrived at the operating loss, in order to bring this thing down to net results of the company for the year, we deducted this thing as in the nature of a special credit of some type.

Q His Honor just wants to know whether you didn't treat it as an asset. You did treat it as an asset, did you not? A No, not as a matter of accounting.

Q Treat it as an income? A Well, treat it as a credit in arriving at the net worth from one period to the next. I mean you would have to bring it in as a credit, whether credit in the nature of increase in capital or in the nature of increase in earnings is purely a matter of theory. We simply treated it in the nature of a credit to the losses.

Q Forfeiture? A Forfeiture, yes, sir.

Q It is a forfeiture to the subscriber and gain to the New Jersey Bankers' Securities, isn't it? A You simply cancel a certain amount of obligation which you had and that became a forfeiture item. I don't know just how you classify it.

Q The subscriber loses and the company gains. A Yes, sir; it increases the net worth of the company by that much.

Q That is what I am asking you. A Naturally.

Q Therefore, it is an asset, isn't it? A I am thinking now of the accountant—technical term it would not be an asset. It increases your net worth.

Q Was this statement already in evidence before, or is this a new statement? A This is a new one.

The Court: Supplemental?

The Witness: Yes, sir.

The Court: Supplementary to the old one.

The Witness: To the old one.

The Court: And carried you up to—(interrupted).

The Witness: Carried us up to about July 31st—or this is August 31st.

The Court: Up to July 31st the figures are the same.

The Witness: Yes, sir; that is right.

The Court: Added the next month.

Q What you have done is you added the next month and changed the language. The language you employed in the last item does not appear on this one. A I think you are wrong. I do not recall.

Q I am asking you. A I do not recall. The last one is around here somewhere.

The Court: The last one is in evidence.

Q Does this statement show the amount of all fees, lawyers fees and legal fees that have been paid out by this company? A For the fiscal year. I don't know whether that item, prior period, includes some of it. I have an impression it might.

Q If it does, will you state the entire amount? A It shows in the operating expense for the

fiscal year "Legal and professional fees, $22,697.73," and then in the prior year it shows an additional item of $3,108.46. That is the total sum—$25,000.

Q Does that include the fees for the drafting of that contract with the Equitable Finance—is that included, in Bernstein and so forth, or is that exclusive? A It includes some fees of Collins & Corbin. I don't know whether it includes the other fees or not. I really don't remember.

Re-direct examination.

Q In calculating your profit and loss as appears on that schedule you did not take into account shrinkage or depreciation in securities unless those securities were actually sold. A That is right.

Q Therefore that statement does not reflect any shrinkage in Lebanon or Perth Amboy banks. A No. We have a balance sheet attached which shows it at the original cost as part of the assets.

COMPLAINANT RESTS.

Mr. Glauberman: I desire to make a motion.

The Court: Do you rest?

Mr. Glauberman: No. I have some papers to put in.

The Court: Put them in.

Mr. Glauberman: I would like to make a motion on the testimony of the complainant.

The Court: You may do that if you rest. If you are going to make that motion I am going to exclude testimony. I warn you.

Many lawyers make the application without knowing the practice.

Mr. Glauberman: I recall it just now. I have three affidavits I would like to offer in evidence in opposition to the order to show cause as well as to my application, still pending before your Honor, to restore the property of the company to the board. I have one affidavit from Mr. Markley. (Reading). I will file this affidavit. I am filing it in support of my objection to the order to show cause and not on my application.

The Court: I am not hearing your application.

Mr. Glauberman: I offer it on my petition which is still pending before your Honor.

The Court: I am hearing one matter at a time. I have that matter in mind and I am going to dispose of that. I may or may not dispose of yours. Your petition may stand or fall by it.

Mr. Glauberman: Will your Honor then tell me when—(interrupted)

The Court: Have you anything more to say?

Mr. Glauberman: Yes, sir; I have an affidavit about thirty pages that I would like to read of Mr. Ross.

The Court: You should have produced your witnesses here. You had plenty of time to serve them on the other side.

Mr. Glauberman: My thought was that your Honor was going to hear my application.

The Court: I set the rule to show cause down for oral hearing.

Discussion.

Mr. Glauberman: I did not know that, if your Honor please.

The Court: I do not know what you knew. I thought I explained to you a number of times just the course the Court was taking. The very last time I met you after a number of times in my office, I said to you that hereafter things will be done strictly according to law in the court room. I tried in every possible way to help the situation out without much success. I was going back to the legal routine. As a lawyer you should have produced your witnesses here instead of attempting at the last hour to read affidavits which you have not submitted to the other side.

Mr. Glauberman: If your Honor please, I must have been mistaken. By Section 65 the Court has power to hear oral proof, take testimony or by affidavit.

The Court: Yes.

Mr. Glauberman: And at a summary hearing you can produce ex parte affidavits instead.

The Court: You can in a summary hearing, but we have the practice of submitting them to the other side so that the other side may meet them. Not leave it to this last minute. The other side has a right to meet what you have to say. The other side have a right to call upon you to produce your witnesses on the witness stand for cross examination. That is my practice. I think you practice in New York.

Mr. Glauberman: In New York sometimes and sometimes in New Jersey.

The Court: I understood you were a New York man and did not know our practice. These are ex parte affidavits. They do not help me.

Mr. Glauberman: I will leave those affidavits until your Honor sets another day on the other petition.

The Court: I think I instructed you fully. I think I said it in open court a number of times that the issue tried on a rule to show cause is this, whether the company has been doing business at a loss in the language of the statute, so that it cannot, with advantage to the stockholders and security to the public —or whatever that language may be—now, upon that issue you have a right to present anything pertinent to meet the complainant's case. I explained that to you in open court. If your affidavit meets that situation—(interrupted)

Mr. Glauberman: They do meet that situation. I will give Mr. Ruback the affidavits and if he thinks there is anything to answer, I have no objection to his filing answering affidavits.

The Court: Mr. Ruback could have served an order upon you to produce your affiant in open court before me. You should have been prepared. You had these affidavits for some time, I suppose.

Mr. Glauberman: About three days.

The Court: You should have given them to them and they could have responded, and your affiants would have been ordered to appear here.

Mr. Glauberman: Now, if your Honor please, if I recall correctly, I thought your Honor told me that you were going to hear the question about the board of directors on our petition, on which I asked your Honor to sign an order. Your Honor stated to me that you—(interrupted)

The Court: Can not I get this to you? Let me try it. Has the company been carrying on business at a great loss and greatly prejudical to the stockholders and to such an extent that it cannot carry on with safety to the public and the advantage of the stockholders. The two circumstances must be present. The first, I understand you cannot meet. The second you might meet in this way, show me that there is a legally competent board, furthermore, having shown that, if you can show it, that that board can carry on this business at a profit. I have said that to you.

Mr. Glauberman: I understood it, but I didn't think it was one issue. My thought was that it was two separate applications.

The Court: You may think that, but I have not entertained the other yet. I am trying this one. I said the last time we were here that I would try the second of these two items, so that you could have a record and take it to the Court of Appeals. A record that you could have made to maintain an appeal upon the other petition.

Mr. Glauberman: Then I understand your Honor, you do not think it is part and parcel of one—(interrupted)

The Court: Whether I hand this company back to the company depends in the first

instance on whether you have a legal board of directors, second whether the Court is of the opinion that the legal board of directors could carry on this business with profit and the burden is on you. I think I made that —I tried to make it clear. I will write it— send you a postal card.

Mr. Glauberman: I am very sorry, your Honor, but it seems to me that here is a petition filed that a board of directors was elected.

The Court: You had your opportunity. You have your opportunity.

Mr. Glauberman: There are no answering affidavits to my petition.

The Court: I am not going to entertain it, not at this time, and that will stand or go down on what I do in this. It is the main issue in the case.

Mr. Glauberman: Then, if your Honor please, if Mr. Ruback has no objection, I would like to read it, and if he has objection I am ready to stand or fall by the complainant's case.

Mr. Ruback: I have thus far glanced through thirteen pages of the affidavits, and the substance is an attack upon Mr. Jelin —personal attack upon his conduct while in charge of the company. There isn't anything as to whether this company has operated at a loss. I object to it, first, on its being in—as not being competent, no opportunity of cross examination, and second, as being wholly irrelevant to this issue.

Mr. Glauberman: I am willing to rest on the main issue.

The Court: Withdrawing your affidavit?

Mr. Glauberman: Withdrawing my affidavit. Reserving to myself the right to file it on the next application before your Honor.

Mr. Weinberger: I want to offer, if I may, the file in the petition filed in this case on behalf of the return to the company of the assets, the subsequent petition filed in behalf of the company, and I desire also, if your Honor please, to have the files with regard to the notice of appeal offered upon the ground—I won't state the ground. I offer it specifically. The subsequent petition filed by and on behalf of the board of directors for the return of the property and the petition—notice of appeal and petition of appeal. If they are not in the file, sir, I should be pleased to present them. I think Mr. Ruback has been served with a copy of each and there is no dispute about the subject.

The Court: The petition and notice of appeal.

Mr. Ruback: They are part of the files.

The Court: Do you want to sum up or submit?

Mr. Weinberger: I would like to be heard.

Adjourned until May 15, 1930.

May 15, 1930.

Continuation of hearing pursuant to adjournment at the place and in the presence of the parties as before.

Mr. Glauberman: Yesterday after the complainant rested I offered certain affidavits in evidence and then your Honor asked me why I didn't bring witnesses and I explained to your Honor that—(interrupted)

The Court: What is your application now?

Mr. Glauberman: My application is, I rested yesterday. Inadvertently did it. My petition is to allow me to open the case for this reason. Frankly speaking I misunderstood your Honor. Though your Honor tried several times yesterday to explain to me it was not until after court that I realized your Honor's idea. After I rested I read over again the letter your Honor wrote me about two weeks ago. Your Honor will recall. Now I realize the importance of this matter and also realize it is discretionary with the Court. I know how patient your Honor has been with me. I would appreciate it if your Honor would permit me now to produce certain evidence which I think is material to the case.

The Court: What evidence?

Mr. Glauberman: As to the competent board of directors. I realize now that it is the issue in this case. We are about to resume our business with safety to the public and advantage to the stockholders. My idea was that it was a separate independent application and nothing to do with this application before your Honor now.

The Court: It took a long time for you to find it out. Yesterday was at least the twentieth

time that I told you the same thing. It is not material to this issue. Even after an injunction such an application as you made cannot be made under our statute.

Mr. Glauberman: Under Section 69.

The Court: Whatever the section may be.

Mr. Glauberman: But, if your Honor please, the reason I am asking it is this: the matter is of great importance to the defendant. I hate to think that by inadvertence on my part—(interrupted)

The Court: I will let you do it.

JULIUS J. NIRENSTEIN, sworn for defendant.

Direct examination by Mr. Glauberman.

The Court: Are you ready to proceed?

Mr. Ruback: Yes, sir.

Q What is your profession? A I am an attorney-at-law, sir.

Q Where? A New York City.

Q Connected with any firm? A Yes, sir; Nirenstein, Rhodes & Nirenstein.

Q Where do you maintain your offices? A 165 Broadway, New York City.

Q Was your firm attorneys for a stockholders protective committee consisting of Charles Ryan, Winston, Humbert and Louden? A Yes, sir.

Q Were you in charge of the matter? A Yes, sir.

Q Are you acquainted with a letter that was prepared by the stockholders protective commit-

tee dated December 30, 1929? A Yes, sir; I am familiar with the letter.

Q Can you tell us whether—under what circumstances that letter was sent and to whom? A This letter was sent to each and every stockholder of the New Jersey Bankers Securities Company whose name appeared on a list furnished to us by Miss Matey, who I understand to be secretary of the New Jersey Bankers.

Q Where were those envelopes prepared, if you know? A The envelopes were prepared and the addresses put on them in Miss Matey's office, 60 Park Place, in the New Jersey Bankers Securities office.

Q That letter contained certain enclosures, did it not? A It did.

Q I show you one and ask you to identify it —what that is? A This notice is stockholders call issued by three stockholders of the New Jersey Bankers Securities Company.

Q Is that the enclosure? A That was the enclosure.

Q I show you another paper and ask you whether that was also an enclosure? A That was enclosed also.

Q And what else? A And this envelope was enclosed.

Mr. Glauberman: I offer them in evidence as one exhibit.

(Paper marked Exhibit D. 1 of this date.)

Q Did you attend to the advertising of this meeting in any newspaper? A Yes, sir; we advertised in the Newark paper and Jersey City paper.

Julius J. Nirenstein, By the Court.

Q How many days prior to the meeting did you advertise? A It was at least ten days prior to the meeting.

The Court: Meeting of what?

Mr. Glauberman: Meeting of the stockholders held January 14, 1930.

The Court: The second meeting was—(interrupted)

Mr. Glauberman: The second meeting was April 17, 1930.

Mr. Ruback: No cross examination.

By the Court.

Q Who did this stockholders committee represent? A The stockholders committee represented a substantial number of stockholders.

Q How many? A I should say approximately 75,000 shares.

Q Who gathered them at the stockholders' meeting? A The stockholders protective committee gathered them.

Q Who was instrumental to gather them into a committee, you? A No, the committee gathered—(interrupted)

Q Your firm? A No, sir, the committee gathered and called upon us to represent them.

Q It was formed before your firm was connected with the committee? A It was not.

Q Was it formed before your firm was connected with the committee? A No, sir.

Q Your firm formed the committee then? A I wouldn't say we formed the committee.

Q Did you solicit the stockholders to form the committee? A Our firm did not.

Q Who did? A The stockholders committee.

Q Who at first constituted the stockholders committee? A As I recall it Mr. Ryan and Mr. Winston were the first members that called upon us and told us they got to do something for the company in the interest of the stockholders.

Q Then they formed themselves into a committee and called upon you? A Yes, sir.

Q That is the idea? A Yes, sir; your Honor.

Q And who solicited the stockholders? A The committee.

Q In what manner? A By sending out letters to the committee.

Q What? A By sending out letters to the stockholders.

Q Under your supervision? A Yes, sir; under our supervision.

Q Have you copies of the letter? A I haven't it here, sir. Mr. Glauberman may have them.

Mr. Glauberman: Which letter are you referring to, the first?

The Court: The first letter the stockholders committee sent out.

Mr. Glauberman: I was not in the case then, if your Honor please.

Q Will you give me a copy of the letter? A I will be glad to give you a copy.

Q Can you get it now? A I haven't my file with me.

Q Do you recall the contents of that letter? A Well, in a general way I do.

Q Tell me in a general way what it contained? A The contents of the letter in a general way, stated that the undersigned formed themselves into a protective committee for the

purpose of protecting the interests of the stockholders of the New Jersey Bankers Securities Company which was then in receivership.

Q What else? A And for the stockholders to band themselves together in an effort to secure collective action for the protection of the stockholders and also requested those stockholders who desired to do it to send in, I believe it was ten cents a share for each share in the New Jersey Bankers' Securities that they owned.

Q Who signed the letter? A The letter was signed by the stockholders' committee.

Q Who prepared the letter? A The letter was prepared by the committee in conjunction with our office.

Q Who in your office in conjunction with the committee? A Myself, my brother and Mr. Rhodes.

Q Where did you get the list of stockholders at that time? A I do not recall, sir. Mr.—some member of the committee furnished us with a list to send the letter to.

Q Who else was connected with that committee besides the two you have mentioned? A Mr. Ryan, Mr. Winston, Mr. Humbert and Mr. Louden.

Q Who else? A Those are the four members of the committee.

Q They were the four members of the committee, but who cooperated with the four members of the committee? A I do not recall the names of the members offhand, sir. I would be glad to give you a list of them.

Q I am not asking you for the names of the members of the committee, but who cooperated with the socalled committee beyond the names

you have given me? A Well, there were several other stockholders who cooperated with them.

Q They have continued—that committee has continued down to the present time? A Well, the committee hasn't continued to actively function.

Q When did they cease actively functioning? When did the committee cease to actually function? A The committee ceased actually to function about in—I should say about a month or two after the election was held in January, 1930.

Q Now, who actively cooperated with that committee until that time? A Well, there were various stockholders.

Q Tell me who—various big stockholders? A I haven't got the names with me now, your Honor.

Q I am not asking you about names. I am asking you of main—heavy stockholders. A Well, recall offhand there was a heavy stockholder by the name of Emanuel Kaplan, stockholder by the name of Mr. Strickland, stockholder by the name of Mr. Silberstein. Those are the only names I have offhand.

Q Mr. Weinberger? A Mr. Weinberger was asked for information by our committee at various times.

Q He cooperated with your committee? A I wouldn't say that he cooperated. I say he gave us any information that was requested of him.

Q Did he cooperate actively with your firm? A I wouldn't say that he cooperated actively.

Q In what way did he cooperate then? A Our committee was anxious to get information as to the history of the company and as to certain papers that Mr. Weinberger might know and

called upon him. We asked him for that information and he furnished it to us.

Q How long did you continue as attorney for the committee? A We continued attorneys for the committee all along. We haven't, to my knowledge formally disbanded.

Q What? A They haven't formally disbanded to my knowledge.

Q No. How long did you continue as attorney for the committee, you or your firm? A We continued all along attorneys for the committee. We retained Mr. Glauberman, I believe, in December, 1929, to appear in this court for our committee. Mr. Glauberman has had the laboring oar since then.

Q The committee selected Mr. Glauberman or you or your firm? A Our firm selected Mr. Glauberman.

Q Were you under a retainer from the committee? A Yes, sir.

Q Mr. Glauberman under a retainer from the committee? A He was asked to appear, sir, for the committee.

Q By retainer from the committee? A Not that I know of. I did not personally retain Mr. Glauberman. That was done by my brother.

Q Is your brother here? A He is not, sir.

Q Any reason why he isn't here this morning? He has been here in the past. A No; there is no special reason. He is busy in his office.

Q What retainer has your firm had from the committee? A I don't know what you mean by retainer.

Q Money—fees. A Well, if your Honor—(interrupted).

Q How much? A If your Honor please, I would like to say that I regard that question as a privileged question. I do not think I ought to—(interrupted).

Q You refuse to answer? A I do not think I ought to answer.

Q You refuse to answer? A Yes, sir.

The Court: Send for Mr. Mullin.

The Witness: If your Honor insists, I will answer.

Q Well, how much of a retainer did you have? A I do not remember the exact figures, sir, but I know there was at one time—there was about in the neighborhood of about $2,000 or so.

Q All right. From what source did that come? A That came from the stockholders' committee and from the moneys that were paid in by the stockholders.

Q How much did the stockholders pay in? A As I recall it about approximately $1,800. I am not certain of the figures. I have them at the office, though.

Q Did all the money that your firm got as fees in this case come from the stockholders' committee? A Yes, sir.

Q Where did the stockholders' committee get the money, do you know? A Well, some of the members of the stockholders' committee personally contributed. They secured money from other stockholders of the New Jersey Bankers' Company.

Q What other stockholders? A I haven't the list with me or I would give it.

Q Do you know? A I have a list at the office.

Q Regardless of the list, do you know from what other stockholders money came to pay fees and pay expenses? A No. I know Mr. Kaplan contributed; I know Mr. Silberstein contributed money, that Mr. Kipnis—I know Mr. Ryan contributed, Mr. Winston contributed, and the rest of the names there I would be glad to give you. The list I have in the office.

Q Does the name of Weinberger appear on your list contributing? A No, sir.

Q Who paid Mr. Glauberman? A That I don't know, sir. I don't know that Mr. Glauberman was paid.

Q How much has been paid to Mr. Glauberman? A That I don't know.

Q If Mr. Glauberman was paid anything do you know from what source he was paid? A I say, sir, I do not know that he was paid. Mr. Glauberman was retained by my brother, who knew Mr. Glauberman, and while I had known Mr. Glauberman several years ago I did not meet him until after he was in the picture.

Q Mr. Glauberman has been working hard in this case and I suppose he has been paid. A I don't know, sir.

Q Ever get any information from your brother that Mr. Glauberman had been paid? A No, sir; I didn't ask him. I know that my brother retained him and asked him to appear at the committee in December, whether he got him any money or not I do not know, sir, but if you would like it, I would be glad to give you my file.

Q What? A If you would like it I would be glad to get the figures from my office.

Q Figures from your office that Mr. Glauberman was paid? A I have a paper that would show it.

Q Don't you know? A No, sir; I do not know. I didn't handle that. I know that I personally have never paid Mr. Glauberman anything.

Q Do you know whether your brother didn't pay him anything. A I don't know, sir.

Cross examination by Mr. Ruback.

Q The lettter of December 30th addressed to the stockholders of the Bankers Company Exhibit D. 1., that was the second letter that was sent by your committee to the stockholders of his company. A Yes, sir.

Q How long before this letter of December 30th was the first letter sent? A Why, I do not recall, sir. I would have to see the letter.

Q Approximately how many weeks? A Well, it was several weeks, I think.

Q And did that first letter mark your first connection with this committee? A Well, we had been meeting before we sent out the first letter with the committee.

Q What was the first time you or any member of your law firm had any connection with the affairs of the New Jersey Bankers Securities Company?

Mr. Glauberman: I object. I do not see any connection. What difference does it make?

The Court: It is of very great importance to me.

Mr. Glauberman: I would be glad to furnish any information.

The Court: Perfectly legitimate that the stockholders get together. No criticism by the Court because of that.

The Witness: I am sorry, Mr. Ruback, I cannot furnish you with the exact date. It was some time in the summer of 1929.

Q And with respect to what matter did your firm first function in the New Jersey Bankers case. A As I recall it several stockholders that we had represented in other matters, clients of ours, conferred with us about it.

The Court: Raise your voice.

The Witness: Several stockholders that were clients of ours conferred with us about the New Jersey Bankers situation.

Q Was that in July, 1929? A I think it was about that time.

Q Did you or your brother at that time confer with Mr. Weinberger, Harry Weinberger?

Mr. Glauberman: I object. How is that material?

The Court: Objection overruled, very material.

The Witness: I think that my brother did have some conferences with Mr. Weinberger at that time.

Q Was that for the purpose of forming a creditors' committee — stockholders' committee with a view to reorganization? A I think that was the purpose at the time.

Q Where did you confer, in Newark? A I don't think I personally conferred at the time.

Q Do you know where your brother conferred with Mr. Weinberger? A I do not know, but—I don't know where. I know that he did see him.

Q Did your firm represent Mr. Winston prior to July 25, 1929? A I believe our firm did in some matters of his own.

Q Pertaining to the New Jersey Bankers Securities Company? A No; personal matters.

Q Steady client of your office? A Personal matters.

Q Was he a steady client of your office? A I believe he was.

Q When did you personally first meet Mr. Harry Weinberger? A Personally it was in the summer of 1929. I do not recall the time.

Q What month? A I couldn't give you the exact date now. I could give it from my book.

Q What was the object of that meeting? A I went to see Mr. Weinberger to ask him about some information of the New Jersey Bankers Securities.

Q For what purpose? A For the purpose of forming a protective committee and protecting the interests of the stockholders.

Q When did your protective committee first meet? A I couldn't give you the exact date, sir.

Q Who invited the several gentlemen who constituted later the protective committee? A I think Mr. Ryan was the man that invited them.

Q Was Mr. Weinberger present at the formation of that committee? A I am not certain, but I have heard that he was present at one meeting. I personally did not attend each and every meeting. It was not a meeting that I attended.

The Court: Just answer the questions.

Q Did you personally have anything to do with the suit that was started by your client, Mr.

Winston, against Mr. Stamler and others in the United States District Court for this district?

Mr. Glauberman: I object.

The Court: It is pretty far afield.

Mr. Ruback: I do not think so.

The Witness: I had something to do with it.

Q Who retained you to institute that suit?

Mr. Glauberman: I object.

The Court: Objection overruled.

A Mr. Winston, as I recall it.

Q Get a retainer from him? A I believe we did.

Q From anyone else for that service? A I am not certain, sir. My brother handled the retainer himself.

Q Do you know whether you got a retainer for $500.00 from Mr. Emanuel Kaplan? A I couldn't tell you. I know Mr. Emanuel Kaplan contributed some money in there, but can't remember when.

Q For that suit? A I don't know whether it was for that suit or not.

Q Who keeps the books for your firm? A My brother.

Q Ever look through them? A Very rarely.

Q Do you know whether Mr. Kaplan is related to Mr. Harry Weinberger? A I do.

Q What is the relationship? A Brother-in-law.

Q When did you first meet Mr. Kaplan personally? A Oh, about five or six years ago.

Q Did you meet him during July and August of 1929? A I believe I saw him.

Q Did you personally have anything to do with the preparation of the complaint in that Federal suit? A I did.

Q Was that complaint prepared in Newark?

Mr. Glauberman: I object.

The Court: Overruled.

A Not to my knowledge.

Q Did you confer with Mr. Glauberman or with Mr. Weinberger regarding the substance of that complaint? A I did.

Q At his Newark office? A No, sir.

Q Did he come to your office? A Not that I recall.

Q Where did you confer? A At his home.

Q New York City? A Park avenue.

Q That was before you started suit? A I can't give you the exact time.

Q Did you receive any assistance from Mr. Weinberger in your work towards the institution of that suit?

Mr. Glauberman: Same objection.

The Court: Same ruling.

A I personally received assistance. I asked Mr. Weinberger for certain information that I wanted in it and he gave it to me.

Q What was that information you sought? A I do not recall now. Some of the facts in the complaint.

Q Did you cooperate with Mr. Weinberger in the preparation of any papers in his suit against Mr. Stamler and others? A No, sir.

Q Did you employ any of his pleadings or documents to assist you in your suit? A Not that I recall.

The Court: What was that suit? What was the suit that counsel and you are speaking of?

The Witness: Suit that was instituted by Mr. Winston against Mr. Stamler and others in the Federal Court.

Q That was the suit for damages? A Yes, sir.

The Court: Mr. Stamler and the others —who were the others?

The Witness: Mr. Jelin was one of the defendants, Mr. Ruback was a defendant, Mr. Leber was a defendant. I do not recall the other names offhand, sir. There were two or three others.

The Court: Do I understand Mr. Kaplan —Mr. Weinberger's brother-in-law personally contributed towards the fees, for your fee in that suit?

The Witness: I don't know, sir, whether he did or not.

Q Mr. Bernstein, the complainant in this present suit was a defendant in that damage suit? A I think he was. I am not certain.

Q Mr. Vechte who had been at one time a director of the New Jersey Bankers Securities Company? A I am not certain.

Q You don't remember that? A I don't remember the details.

Q You personally tried that suit before the Federal Court at Trenton, did you not? A Why, I wouldn't say that I tried it, no.

The Court: I am not interested in that. I want to know where the money came from.

The Witness: I assisted in the trial.

Mr. Glauberman: I can't see how this helps the Court.

The Court: I will explain it to you in a very few words. It has been represented to me by you that there is a group of men who claim to be directors of this company independent of the Weinberger interests. You ask me to hand over to them this money. They claim to have been elected until next September when they go out of office. It is a matter of importance to me what influence produced their election. It is also important to me what will become of them after next election, due to Mr. Weinberger's controlling 172,000 votes. Now if that makes it clear to you, you will subside with your objection. If it does not make it clear to you, you may continue your objections. Objection overruled. Now that is the purpose. It is claimed, you know. You are calling upon the Court to exercise a sound judgment and the Court has got to know that its sound judgment rests upon a sound promise and an honest premise.

Q You did not actively participate—I am leading up to it—the very next question will show the materiality. I promise that it will tie up—you did not personally participate in the matter before Judge Avis? A Oh, yes.

Q Anybody other than your firm attorneys of record in that suit? A No, sir; not that I know of.

Q Who examined the witnesses in that case?

Mr. Weinberger: I object. May I have my objection noted? May I state the reason, sir?

The Court: For the broadest reason.

Mr. Weinberger: I would like to have them stated. As long as the Court wants all this, we would like to have them in evidence.

The Court: Objection overruled.

Q Who examined the witnesses that you offered in support of your claim? A The examination was started by Mr. Harry H. Weinberger.

Q He acted as your trial counsel? A Yes, sir.

Q Did you retain him? A We asked him to.

Q Did you pay him for his services? A No, sir.

Mr. Glauberman: I object to that and ask my objection be noted.

The Court: Objection overruled.

Q Mr. Nirenstein, from July, 1929, down to the present time, you and Mr. Weinberger have frequently been in conference concerning the affairs of the New Jersey Bankers Securities? A I wouldn't say frequently. We have been in conference.

Q And before this board of nine persons was selected was the personnel of that board the

subject of one or more of your conferences with Mr. Weinberger? A Not one of my conferences, no, sir, it was not.

Mr. Glauberman: I object.

The Court: Objection overruled.

Q Do you know whether that was a matter discussed by your brother with Mr. Weinberger? A I do not.

Q Was there any correspondence between your firm and Mr. Weinberger touching that subject? A I think not.

Q Do you preserve in your office correspondence received and copies of letters sent? A Surely.

Q And you have your complete file in the New Jersey Bankers matter? A Surely.

Q You can produce it? A I can produce it.

Q Now, when did you for the first time learn of the personnel of this proposed directorate? A As far as I am concerned, I learned of it the first time when they were elected.

Q You mean the night of the election? A Yes, sir.

Q You had no previous information as to who the nominees would be? A I personally did not.

Q Had your brother attended any conferences—do you know whether your brother attended any conferences at which a slate was made up? A I don't know whether a slate was made up. I know that my brother and Mr. Weinberger—the committee had some conference before that meeting. It may be the subject was discussed. I do not know.

Q You do not know? A I do not know; I was not present, sir.

Q The tax of ten cents a share that you have testified to was received by your firm? A Received by the committee.

Q At your office? A At our office.

Q And what happened to those funds? A Excuse me. I would like to withdraw that answer. As I recall it, it was received by the Trade Bank in New York for the committee.

Q What bank? A Trade Bank, New York City.

Q They are located where? A Around 34th street—in that neighborhood.

Q Were the funds deposited in that bank? A I think they were.

Q To the credit of what account? A Stockholders protective committee of the New Jersey Bankers.

Q And those were checked out by whom? A By the protective committee.

Q Who signed the checks? A I never saw a check. I think Mr. Ryan and one other member of the committee signed checks.

Q And all payments received by you for professional services in this matter was by check? A I don't know, sir.

Q Any moneys come directly from the stockholders to your firm? A That I don't know, sir.

Q Would your books reflect that? A Yes, sir.

The Court: You have your books and files here at two o'clock.

Julius J. Nirenstein, cross.

Cross examination by Mr. Weinberger.

Q Isn't it a fact that Mr. Weinberger never paid any money to your firm, never attended any meeting of the committee—this so-called protective committee and never spoke to you with regard to the formation of the protective committee? A Well, I know—(interrupted)

Q I am talking about you personally now.

The Court: Won't you divide that question into three parts?

Mr. Weinberger: I will be glad to.

The Court: He might say No to one and Yes to another.

Q Did Mr. Weinberger ever talk to you personally with regard to the formation of a protective committee? A No.

Q Did Mr. Weinberger ever contribute any money to you or pay you any money, or your firm—as far as you know or have any knowledge —towards the support of this protective committee? A No.

Q Did Mr. Weinberger ever speak to you with reference to the formation of the protective committee? A No, sir.

Q Aside when you personally requested the privilege of an interview with Mr. Weinberger, did you ever have occasion to meet Mr. Weinberger with regard to the New Jersey Bankers Securities or its affairs? A No, sir.

Q The suit which you argued in Trenton in part was a conspiracy action against Mr. Stamler, Mr. Bernstein, the complainant in this suit; Mr. Vechte, a director of the New Jersey National Bank of which Mr. Stamler was the presi-

dent; Mr. Jelin, likewise a director of the New Jersey National Bank & Trust Company and former manager of the New Jersey Bankers Securities; Mr. Ruback and Mr. Leber, the attorneys for Mr. Bernstein in this Bernstein New Jersey Bankers Securities suit number 1, and I believe one other defendant, is that correct? A Well, I think those are the defendants.

Q And that conspiracy suit was upon the theory that they fraudulently and with intent to assassinate, I will say, the New Jersey Bankers Securities to precipitate the action of Bernstein against the New Jersey Bankers Securities, is that correct? A Among other things I believe that was the theory.

The Court: What other things?

Q And your interview with Mr. Weinberger was to find out the facts with regard to that entire course of conduct by Jelin, Mr. Stamler, Mr. Bernstein and so forth; is that correct? A I conferred with you to get information concerning the New Jersey Bankers Securities.

Q And Mr. Weinberger told you that Bernstein was the owner of 61 shares of stock, is that right, of the New Jersey Bankers Securities? A I do not recall that you told me that.

Q You prepared the bill on the facts, did you not, presented to you? A Yes, sir.

Q And the information received in part? A I did, sir.

Q Mr. Weinberger told you that Mr. Jelin was the dummy of Mr. Stamler, did he not? A I believe he did.

Q And he told you, too, that Mr. Stamler was running the corporation and because he would

not approve of the Equitable Finance deal that therefore he was the one and Mr. Jelin was the one, or both of them were the ones, that got Bernstein to file this suit.

Mr. Ruback: I object. I do not think this is proper cross examination. I do not think that Mr. Weinberger and the interests he represents stands in a position adverse to the interests which call this gentleman as a witness. I cross examined him and touched on that subject, but I do not think that that opened the door to Mr. Weinberger to cross examine in turn.

The Court: He was called by Mr. Glauberman; you examined this witness. I will permit this question to be answered and it will stop there.

Mr. Weinberger: I want to make it clear on the record. I want my point noted if it may be permitted, sir.

The Court: I think you have gone afield of the direct examination now, what you told him and what he told you.

Mr. Weinberger: I want to say to the Court so that you will understand the theory I am proceeding on—it is my point to put on the record the fact that Weinberger was not an influence which brought about the selection of a board of directors.

The Court: To that point I will admit any testimony.

Mr. Weinberger: I am now trying to show what the conversation was. I am doing it now by the exclusion process.

Q (Question read.) A Generally along that line. That was the substance of it.

Q On December 30, 1929, the date which the stockholders protective committee of the New Jersey Bankers Securities sent out the letters, or of which the letter bears date, will you say whether Mr. Weinberger participated directly or indirectly in the preparation of that letter or any of the subject matter enclosed in that letter which was sent to the stockholders? A Not that I know of, sir.

Q Did Mr. Weinberger ever receive any part of the money received by your firm for the assistance which he accorded your firm in the preparation of these various matters that you had occasion to interview him on? A To my knowledge, no, sir.

Q Mr. Kaplan, the brother-in-law of Mr. Weinberger has been referred to. The fact is he owns 6,970 shares in this company's stock, is it not? A About that.

Q The further fact is he paid primarily $93,000 for that stock, did he not? A That is what he told me.

Q In cash? A Yes, sir.

Q Which went into the treasury of the company? A That is what he told me.

Q Mr. Silberstein, the other gentleman whom you referred to, owns approximately, he or his affiliated corporation or corporations with which he is affiliated, have approximately 4,500 shares.

Mr. Ruback: I object.

The Court: Objection sustained. Not cross examination.

Mr. Weinberger: The name of Silberstein was mentioned by the witness. Not only mentioned by him, but also that he contributed money. I think a man who has 5,000

shares certainly has a right to protect his interests.

The Court: The name had slipped me. Strike out the ruling. I will admit it.

Q Do you know how much Silberstein held? A Silberstein to my knowledge held about 4,000 shares.

Q As a matter of fact he owned about 7,000 shares. A He told me he had some corporations that owned additional shares. I don't know the amount.

Q He was the one that contributed towards this fund to protect the interests of the stockholders, was he not? A He was one of the contributors, yes, sir.

Q Mr. Silberstein is the same gentleman who appeared here before Vice-Chancellor Backes and told the Court he was one of the directors elected and that he wanted—he took the job as director so that he could find out whether everything was up and up and that is why he was interested in becoming a director, is that the gentleman? A I heard he was here. I was not here.

Q I beg your pardon. You were not here that day? A No, sir.

Q Mr. Strickland has been referred to as one of the gentlemen by you. He likewise was a substantial stockholder, was he not? A I understand he owns a thousand shares.

Q So far as you know, Mr. Nirenstein, did Mr. Weinberger exercise any influence over any person to vote in favor of any of the men elected at the meeting of January 16, 1930? A No.

Julius J. Nirenstein, cross.

Cross examination by Mr. Fitzsimmons.

Q Mr. Nirenstein, why was it necessary for you to retain Mr. Weinberger to try the Federal Court case at Trenton?

The Court: I am not going into that. Too far afield.

Q Mr. Nirenstein, has your firm been promised any money by this proposed board of directors if the company was turned back to them? A No.

Q Do you know whether any money has been promised to be paid to Mr. Glauberman by that board? A I do not know.

The Court: If they are duly elected what wrong is there in a company duly elected, and Mr. Glauberman has brought the thing about—why shouldn't he be paid? What is the point to your question?

Mr. Fitzsimmons: I want to show that a large sum of money has been promised to this firm of Nirenstein & Nirenstein to put over this deal whereby the property of this company will be turned back to this particular board of directors, and I think it is important.

The Court: Do you criticize the amount? The fact that they promised seems to me to be perfectly legitimate, and that they had promised a large sum for doing a good job would seem to me to be perfectly legitimate. Is it the amount you are criticizing?

Mr. Fitzsimmons: I want to bring out if they were promised anything.

The Court: I assume that Mr. Glauberman is not working for his health, and that he is performing labor here either upon an expressed or implied promise to be paid a very good fee, as you call it, if it is delivered over, and if he puts the deal over, he is entitled to it.

Mr. Fitzsimmons: Mr. Glauberman was retained by the firm of Nirenstein & Nirenstein and I am trying to attack—

The Court: There is something more serious than attacking the pay of counsel—of getting a substantial fee for accomplishing things for his client. Anything more?

Mr. Fitzsimmons: No.

RALPH E. LUM, sworn for defendant.

Direct examination by Mr. Glauberman.

Q Mr. Lum, pursuant to an order dated April 7, 1930, did you hold a meeting as the master of this court? A I did.

Q Where was that meeting held, do you recall? A You have the report.

Q It was held at the Robert Treat Hotel April 17th? A If you permit me to see that report which I gave to you. This report embodies the conduction of the affairs of the meeting and would speak for itself.

Q Prior to the holding of that meeting, Mr. Lum, did you visit the office of the New Jersey Bankers Securities Company to ascertain how the books were kept and what would be the record date of a meeting? A I did.

Q Do you recall what the record date was? A Not at the present time.

The Court: What do you mean?

Mr. Glauberman: Record date at which stockholders had a right to vote at said meeting.

Q Twenty days prior to the meeting? A I verified the fact to enable me to conduct the meeting and I have covered that all in a report. I have no independent recollection at this time.

Q Looking at the report will you refresh your recollection of what was the record date of that meeting. A The meeting—(interrupted).

Q That was April 17th. A It was on April 17th.

Q When would be the record date under the statute? A Twenty days previous.

Q It would be about March 27th? A Yes, sir.

Q Mr. Lum, do you recall when you presided at this meeting that you were asked to count all the stockholders that were present? A I was.

The Court: Ask him what happened at the meeting. Put on the record what happened at the meeting.

Q What happened at the said meeting? A I would suggest the report more completely covers this than my independent recollection at this date could do, and it accurately covers it.

Q May I refresh your recollection? A Yes, sir.

Q In your report you state: "Objection was made by Mr. Augenblick," on page 2, "that a

majority of the stock was not present and the requirement of the by-laws were not met. It was, of course, impossible to determine that at that point of the meeting, and I also assumed that I was to follow the order in the conduction of the meeting." What did you mean by that, Mr. Lum? A Just what I stated there, that it was —I asked all those who were there as stockholders who wished to vote. It was impossible for me to tell whether an individual in the rear of the room was a stockholder or wasn't a stockholder.

Q As far as you knew there might have been some there that did not vote. A Why certainly.

Q Did you or did you not conduct that meeting under the theory that you were to hold an election only and not count those that were present?

Mr. Ruback: I object.

The Court: Mr. Lum was there to oversee or supervise an election held—called and held by the stockholders and to report what there occurred.

Mr. Glauberman: May I for a moment explain what I am driving at?

The Court: No. You may ask the question.

Q Did you or did you not state at the meeting that you were holding the meeting according to the instructions given you by the Court and not according to the by-laws? A No; of course not. No by-law was called to my attention that I departed from. I understood that I was to act as chairman of the meeting by direction of the Court instead of having the meeting elect a chairman.

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Q Have you the minutes of that meeting? A They are on file with the report. I made my reports and sent them in with it.

Mr. Glauberman: May I offer it in evidence, the minutes of that meeting as well as the report?

The Court: Who took the minutes?

The Witness: Nicholas Bindseil.

The Court: Who appointed Mr. Bindseil? You mean the official stenographer?

Mr. Ruback: Yes, sir. I asked him to attend and take the record.

The Court: Give it a number.

(Exhibit D. 2. of this date).

Q Mr. Lum, looking at the report, do you refresh your recollection whether Mr. Edward Markley was present at that meeting? A He was.

Q Did you see Mr. Weinberger there? A I think so.

Q He personally didn't vote? A I have no recollection of that.

Q Mr. Weinberger didn't vote. A I have no recollection of it. The record would show.

Q What record will show? A The ballots were preserved. Mr. Markley did vote personally 100 shares.

Q You did not, Mr. Lum, take the list of all the stockholders—all of the proxies that were present at that meeting. A I had the total number of votes which might be cast and I had present the list of all the names of those who were entitled to vote.

Q But you did not take the names of all those that were present at the meeting or any groups

or any proxies that were there. A No. I had present the names of every stockholder who was legally qualified and entitled to vote; then I asked all those who could vote to vote, and I had the names of all those who did vote.

Q Do you recall that an objection was made that there was not 51 per cent. present before the meeting was opened? A I do.

Q And you were asked to poll and see whether 51 per cent. was present? A I think so.

Q You did not take a poll? A I did not.

(No cross examination).

THOMAS E. FITZSIMMONS, sworn.

Direct examination by Mr. Glauberman.

Mr. Fitzsimmons: I would like to note an objection on the record to any questions being asked me concerning representation of proxies, which your Honor has already ruled upon, three weeks ago.

The Court: Take the stand.

Q Mr. Fitzsimmons, are you a stockholder of the New Jersey Bankers Securities Company? A I am.

Q How many shares do you own? A At the present time I think it is 4,224.

Q How many shares did you own on March 27, 1930? A Four thousand and twenty-four shares I think, approximately.

Q Were you present at a meeting on April 17 in the Robert Treat Hotel? A Physically present.

Q Did you vote there? A I did not.

Q Did you participate in the discussion there? A As attorney for a client, stockholder.

Q Now, Mr. Fitzsimmons, you sent a letter to the stockholders, did you not? A I did.

Q Asking them to vote for you, to send your proxies? A I did.

Q How many letters did you send? A I think there were six or seven hundred.

Q How many proxies did you receive? A Oh, I think there were 75 or 80 proxies.

Q Totaling how many shares? A A little over 4,000.

Q Besides your own? A That is right.

Q So that you were at the meeting—(interrupted).

The Court: Besides his own.

Mr. Weinberger: Besides his own shares, about 4,000.

The Court: He had proxies for them?

Mr. Weinberger: He had proxies for others and he had his own shares, and those proxies recited—(interrupted).

The Court: Who were the proxies to?

The Witness: Direct to me.

Q To vote at the meeting of the 17th?

Mr. Ruback: I object.

A To represent them as I saw fit.

Q Have you a copy of those proxies? A No, I have not.

Q Have you a copy of it in your office? A I don't think I have any copies. I think all of the

data was destroyed and the extra letters. I think I could get a copy from someone.

Q Have you got an original that you sent out? A I may have, I don't know.

Q May I refresh your recollection that the proxy recited giving you—(interrupted).

The Court: Your witness. What did you ask? Ask your question.

Q Did or did not the proxies recite that you were to act as attorney for the undersigned stockholder at a meeting held April 17, 1930, of the stockholders of the New Jersey Bankers Securities?

Mr. Ruback: I object for two reasons. It is not the best evidence. The witness says he can produce the proxies.

Q Have you got a copy? A I think I can get one from somebody to whom I sent it.

Q Will you be able to get it to us at two o'clock today? A I do not know.

Cross examination by Mr. Ruback.

Q Mr. Fitzsimmons, did you vote at that meeting any of your proxies? A I did not.

Q Did you register at that meeting your attendance at that meeting under your proxies? A I did not.

Cross examination by Mr. Weinberger.

The Court: Did you go to the meeting in response to the notice?

The Witness: I did not, sir.

The Court: Why did you go to the meeting?

The Witness: I went to the meeting as attorney for the stockholders and I went there—(interrupted).

The Court: As attorney for a stockholder for whom you had no proxy?

The Witness: I had a proxy, but in the capacity of a lawyer, and I so announced at the meeting, that I was not voting the proxies or my own shares.

The Court: How, as a lawyer, did you divorce yourself from your ownership in your proxy holdings?

The Witness: By not voting.

The Court: Did you deposit your proxies?

The Witness: I did not, sir.

The Court: Did you announce the proxies?

The Witness: I did not, sir.

The Court: Did you go there representing your proxies?

The Witness: I did not, sir.

The Court: Did you go there representing yourself?

The Witness: No, sir, not in the capacity of a stockholder.

The Court: Went there to represent who?

The Witness: Mr. Green for whom I had started the suit in this court.

The Court: You say you were not there as stockholder?

The Witness: Yes, sir.

The Court: Did you announce it, that you were not there as a stockholder?

The Witness: I did, sir.

The Court: Did you announce that you were not there as proxy holder?

The Witness: I did, sir.

The Court: Did you announce that you were there by authority of Mr. Green, also a stockholder?

The Witness: I do not believe I made the announcement in that form. I did state the purpose of my being there and that I felt the proposed board of directors—(interrupted)

The Court: That is all.

Mr. Ruback: How many shares did Mr. Green have?

The Witness: As I recall he had five hundred.

Q You have been active in the New Jersey Bankers matter, have you not? A I have been active since the meeting in January when Mr. Weinberger called me on the telephone.

Q You came to court here and said there ought to be $75,000 paid to the receivers when they first applied.

The Court: (Gavel.)

Mr. Weinberger: May I finish the question, please?

The Court: Confine yourself to this subject. I mean, confine yourself to the issue.

Mr. Weinberger: I have a right to question the credibility of this witness by showing, sir, his interest in this case and for

the purpose of determining whether he is telling the truth when he says he did not go to that meeting to vote. I have a right to show his entire conduct in this case, his activities in behalf of the receiver to get fees and so forth, and I propose to show if your Honor will permit me—(interrupted)

The Court: The matter of fees is one for me to pass upon.

Mr. Weinberger: His urging them, sir; his urging them, sir. This gentleman asking $75,000 to be paid when only $75,000 is asked is significant. I have a right to bring it out to show his—(interrupted).

The Court: To go to his credibility?

Mr. Weinberger: Yes, sir.

Q You came here before Vice-Chancellor Backes in open court upon an application made by Messrs. Stamler and LaVecchia for $75,000 and got up and said you recommended that they be paid that money, didn't you? A I got up in court.

Q Yes or no. A Yes, sir; I don't remember the amount whether it was $75,000 or $100,000.

Q You are one of the gentlemen who came in this court room and urged the liquidation of this company, did you not? Yes or no? A Yes; with qualifications.

Q As a matter of fact, you attended this meeting and made several speeches, did you not?

The Court: What?

Mr. Weinberger: Made several speeches at this meeting, the stockholders' meeting.

The Witness: I did.

Q In what capacity were you speaking, for Mr. Fitzsimmons or Mr. Fitzsimmons' lawyer of Mr. Green or Mr. Fitzsimmons' lawyer for the proxies you had in your pocket? A I was speaking as attorney for Mr. Green and as attorney *pro se.*

Q *Pro se.* And you had 4,200 shares. A I was there as a lawyer for myself.

Q *Pro se* and *per se.* And how many shares did you represent? A I had 4,200 shares as I have already stated of my own stock and 500 shares of Mr. Green's stock.

Q Who asked you to go to that meeting? A No one asked me to go to the meeting.

Q Did you tell the stockholders for whom you were proxy that you were not going to vote the stock? A I did not.

Q Did you notify them that you were not going to express an opinion for them at that meeting? A I don't recall my letter, but the letter set forth the purpose for which I wanted the proxy.

Q Mr. Fitsimmons, did you notify the stockholders who were kind enough to send their proxies to you that you were not going to be there in a representative capacity? A I think I notified the stockholders when I asked them to send me proxies that I would use my own judgment to keep Harry Weinberger out of control. I think I explained that explicitly in my letter, quoting the Court's statement.

The Court: What?

The Witness: Quoting your Honor's statement that Mr. Weinberger was the master mind.

Q You and Mr. LaVecchia are very good friends, aren't you? A Very good friends.

Q He is the receiver in this case, you know that. A Yes, sir; I know that.

Q You are not going to get part of the fees, by any chance for trying to liquidate this company?

Mr. Ruback: I object.

Q No agreement between you and Mr. LaVecchia. A No.

Mr. Ruback: I will tell you what I was about to say.

Mr. Weinberger: I object. There is no objection.

Mr. Ruback: There was an objection. The witness answered hastily. I think it is outrageous to ask that question.

The Court: I think so.

Q You served on what board with Mr. LaVecchia? A I am vice-president and director of the South Orange Trust Company of which Mr. LaVecchia is a highly respected member. I am president of the Montrose Building & Loan Association of which Mr. LaVecchia is counsel, and I consider Mr. LaVecchia one of my best friends, but a man who would not stultify himself or me by offering me five cents of anything he is going to get out of this case.

Q When you appeared at this meeting you urged, did you not, the name of Mr. Ferguson as a suggestion for consideration of the stockholders? A I did not.

Q Did you mention the name of Mr. Ferguson? A I did.

Q You had had newspaper publicity referring to the name of Mr. Ferguson as one of the proposed men for the board, did you not? A Newspaper publicity?

Q Yes. A I can't answer that question. I made my remarks to the Court.

Q As a matter of fact you wrote a letter in which you urged the name of Ferguson, did you not, to the stockholders? A I didn't urge the name of Mr. Ferguson.

Q Did you mention it? A Yes, sir.

Q Is it true that you suggested that Mr. Ferguson was to head a group of men for the directorate? A I didn't suggest that he was to have it in that letter. I stated in the letter that I came into court and when the suggestion was made in this court the salvation of the company was to obtain a banker or a group of honest bankers and not so-called, to run this company—that it would be its salvation—I stated in open court several times—(interrupted).

Q I am speaking of your letter now. A All right. I stated in the letter I had secured after much effort the consent of Mr. Ferguson, president of the Hudson County National Bank to head a group to see if they could pull this company out of the fire, and I stated in the letter that due to lack of cooperation with other forces the votes were not promised to insure the election of this board, having in mind my conference with you outside of this court room.

Q Was this in the letter? A Not the last sentence.

Q Well, Mr. Fitzsimmons, the fact is that you urged in the letter the name of Ferguson and came to that meeting—(interrupted).

The Court: Have you a copy of the letter?

The Witness: I did not urge the name of Mr. Ferguson.

Q You did not? Well, sir, you received in all how many proxies? A As far as—as near as I can remember there were 75 or 100 proxies returned to me.

Q Where are those proxies? A The proxies which I had—I went to the meeting with three of them, with letters attached.

Q Three what? A Three proxies, with letters attached revoking proxies granted to the other group.

Q Mr. Fitzsimmons, my question was where are those proxies?

Mr. Ruback: I object. I think that is wholly immaterial. The witness has testified on direct that he did not exercise his power under those proxies. What difference does it make where they are. The place of repose is of no interest to this issue.

The Court: Objection overruled.

The Witness: I destroyed the proxies about two weeks ago with a number of the unused letters which were cluttering up my files.

Q They are destroyed? A They are de-destroyed.

Q You knew that there was a contest on in this court with regard to the ballots and those present at the meeting on the 17th of April, did you not? A I knew there was a contest on, and those proxies were destroyed. After Vice-Chan-

cellor Backes had held that the proxies were not voted at that meeting and were not present, in open court, I saw no further reason to hold them.

Q You say that that was the ruling of this Court? A That is my recollection.

Q And that is what prompted the destruction of them? A I wouldn't say it prompted the destruction of them. I had about a thousand letters which I didn't send out, forms and other data which I had no further use for.

Q Now, Mr. Fitzsimmons, when you reached this meeting— Withdrawn. Were you retained by Mr. Green and paid a fee to file a bill? A I was retained by Mr. Green and I did not receive any fee from him.

Q You say you were retained by him personally? A He came to my office and signed the papers.

Q You received no compensation? A No compensation.

Q Made no agreement for compensation?

Mr. Ruback: Just a moment. I object. While this was permitted before it was to help your Honor to know whether this board was tied up with anybody in the former board. What difference does it make whether this lawyer received a fee from a client in another matter?

The Court: To discredit the witness.

The Witness: I think I have answered it.

Q Did you tell him you were taking an appeal to the Court of Errors and Appeals for him? A I did.

Q Did he authorize you in writing to do it? A No, but I think he came to my office and

signed an affidavit. He was informed as to what I was going to do and called me up three times that day to find out the result of the Court of Errors and Appeals' decision and wrote—and got in touch with me after the return day in this court when the report of Mr. Lum was filed and asked me what my next step would be.

Q Now, Mr. Fitzsimmons, you knew that Mr. Lum had been designated to act as master for the meeting.

The Court: Mr. Weinberger, I think you ought to, on the record, withdraw the question asking this witness whether he had any bargain with the receiver appointed by this Court. I think you should make an apology to the receiver, unless you have some cause for making a statement of that kind. He and Mr. Stamler are officers of this Court appointed by this Court. If you have any knowledge of a thing of that kind or any intimation, it is your duty to bring it to my notice, otherwise you will apologize to both the receiver and the Court for a thing of that kind.

Mr. Weinberger: I want to say right now—(interrupted).

The Court: No; no.

Mr. Weinberger: I am only too happy to withdraw the question. I asked it because it was suggested and it was a statement made and circulated—(interrupted).

The Court: It was suggested?

Mr. Weinberger: It was intimated.

The Court: Where? Here?

Mr. Glauberman: In the corridor of this building. Also outside, sir. That is why I asked the question. I want to say as far as I am concerned personally I did not believe it and I didn't think it was possible and as far as I am concerned—(interrupted).

The Court: Then you should not have asked it.

Mr. Glauberman: There are certain things that we are forced to ask that there may be no criticism directed to counsel in the case.

The Court: Oh, no.

Mr. Glauberman: As far as I am concerned, I want to say now to Mr. LaVecchia for whom I have the highest regard and highest respect that when I asked the question it was a question not suggested by myself, merely asked—as far as I am concerned I am willing to apoligize and I want to go on record in the case that I never believed it at all, and in asking the question it was because of the fact that there had been statements made to the effect, and which I personally refuted and said there was no basis for it. There are a lot of rumors in this case, your Honor, that are unfounded in fact, which never existed, but they exist and you can't stop them and when I hear of any I try personally as far as possible to see that they end there, but despite my efforts there are a lot of other rumors going on. You know a case cannot be tried only in the court room. It is tried outside. I hope that satisfies your Honor, sir. If there is anything further, I will be glad to put it on the record.

Q Mr. Fitzsimmons, I ask you now, sir, when you knew that Mr. Lum was the Master designated by the Court why didn't you tell him openly that you personally appeared for certain reasons? A I didn't think it was necessary.

Q Why didn't you tell him what capacity you were appearing in? A I didn't think it was necessary.

Q You knew there were several hundred people there. A I did.

Q Isn't it a fact that you also knew—withdrawn. That you did all you could to avoid having your ballots counted as part of the quorum? A I certainly did.

Q And isn't it true that when you came there you wanted to see what percentage of the votes were there and anything you could do to prevent a quorum you were willing to do and were going to do? A That is true.

Cross examination by Mr. Ruback.

Q Why was it you sought to prevent a quorum if you could by withholding your votes accomplish that?

Mr. Glauberman: I object. It isn't material whether this man came there or did not come there—what motivated him.

Mr. Ruback: The very last question, whether he did not attempt to prevent a quorum—I want the witness to be given an opportunity to explain the reason for it.

Q Go ahead. A The reason why I attempted to prevent a quorum and an election was due to the honest conviction I had that any election which would put in—(interrupted).

The Court: (Gavel.)

The Witness: He asked for my reason.

The Court: Did anything happen?

The Witness: My reason is I felt it was for the best interest of the stockholders to prevent that particular board from being elected as I felt it would be influenced by Mr. Weinberger.

Q That very day, that morning, you argued an application before the Court of Errors? A I did.

Q In the appeal you had taken? A I did.

Q You had applied to the Court of Errors for a stay of the order of this Court? A That is right.

Q In that application you were opposed by Mr. Ruback, counsel for the receivers, were you not? A Yes, sir; I was.

Q Rather stubbornly opposed? A Very stubbornly.

Q And you failed in your application? A Partly.

Q Your stay was denied? A The Court refused to grant the stay.

Mr. Ruback: That is all.

The Court: No, that is not all.

By the Court:

Q The Court, under the particular circumstances declined to grant the stay? A That is right, sir.

Q What were the circumstances, as you observed? A The circumstances were that Mr. Markley had resigned as trustee to vote the

stock which was issued to him of Mr. Weinberger's 172,000 shares, of which fact I had so advised the Court.

Q The Court of Appeals? A Court of Errors and Appeals. I was asked by a member of that Court in view of that resignation was not the question academic and therefore, Mr. Markley having resigned, what I was seeking was obtained. I stated no, a considerable pressure was being brought to bear on Mr. Markley to recall his resignation.

Q Was this a statement made before the Court? A I made the statement—to recall his resignation and that I had no assurance that Mr. Markley would not go into that meeting that night and attempt by his presence to have a legal meeting, and if his presence would be counted I would not receive what I was seeking. Mr. Corbin, a partner of Mr. Markley was asked by one of the members of the Court of Appeals what Mr. Markley intended to do, if he knew and Mr. Corbin addressed the Court and said, "Mr. Markley will abide by his resignation; he will not vote the stock."

Q The Court took it in conference? A Took it in conference and an hour and a half later advised—(interrupted).

Q What was announced? A The Chancellor merely announced that the motion for the injunction was denied.

Q The stay? A The stay.

The Court: Now we understand it.

Re-direct examination.

Q Mr. Fitzsimmons, the Court didn't give any reason for denying? A No. I so stated.

Q You do not know what motivated the Court, do you? A No; I do not know.

The Court: Only from what you there heard. Did the Court indicate what motivated it? Did it afterwards, when the Chancellor announced the decision did he give a reason?

The Witness: The Chancellor did not give any reason.

Q It might have dismissed your application on the ground that your bill was defective? A Might have.

Q You knew that the motion was before this Court to dismiss your bill and it was reserved, do you remember that? The decision was reserved by his Honor to dismiss your bill on the motion that I made? A I do not recall that. I remember the Vice-Chancellor refused to grant the stay, or rather, refused to grant the injunction restraining Mr. Markley from voting.

Q Now, Mr. Fitzsimmons, you stated before when you came to the meeting—(interrupted)

The Court: It was after that that Mr. Markley resigned?

The Witness: Yes, sir; it was after your Honor's decision.

The Court: After my decision and before the application to the Court of Errors and Appeals, is that right?

The Witness: Yes, sir.

Q Mr. Fitzsimmons, you are familiar with the Corporation Act of the State of New Jersey, aren't you? A Yes, sir.

Q You are familiar with Section 36 of the Corporation Act, I believe.

The Court: Please.

Q Are you familiar with the section of the Corporation Act which provides that a meeting —that at a stockholders meeting only those shareholders—(interrupted).

The Court: I am not interested in what he knows of the law. Tell me what happened.

Mr. Glauberman: I want to bring out whether he didn't know that Mr. Markley despite his resignation could have come to that meeting and voted under the law.

Mr. Ruback: I object. It calls for a conclusion. All that is before your Honor.

Mr. Glauberman: I want to know what he knew.

Q Mr. Fitzsimmons, you knew that as a matter of law that Mr. Markley despite his resignation—(interrupted). A No.

The Court: Ask the next question.

Q Mr. Fitzsimmons, at the meeting you made a long speech, did you not? A Not very long.

The Court: I have read it. It is in the record. You made one yourself.

Q You said that you appeared at the meeting only as an attorney—you testified that you appeared—(interrupted).

The Court: I know what he said. Do not ask a question like that.

Q Did you or did you not at the meeting state that "that I have taken the position—people have given me proxies to represent them at this meeting, but I refuse to vote them; it cannot be made a legal meeting without these proxies and without the 172,000 votes of Mr. Markley. I think it is going to be for the best interests of the stockholders of this company to"—(interrupted).

Mr. Ruback. I object.

The Court: That is in the record as having been said.

Mr. Glauberman: I want particular reference on the record of what he stated, Mr. Ruback. He may be my witness technically, but your Honor sees he is not my witness.

The Court: He is not favorable to you. It is in the record what he said.

HARRY A. AUGENBLICK, sworn for defendant.

Direct examination by Mr. Glauberman.

Q Mr. Augenblick, you are a member of what firm of lawyers in Newark? A Koehler & Augenblick.

Q Were you retained by a stockholders protective committee consisting of Alfred H. Stahl, Henry Louden and Leon London? A I was re-

tained by a stockholders committee. They are in that committee.

Q Did you or any member of your firm prepare a letter on behalf of that committee? A No, sir.

Q Are you familiar with a letter that went out by that committee to the stockholders? A Yes, sir; I have it here.

Q I show you this letter and ask you whether that is the letter? A Yes, sir; that is it.

Q (By the Court) Is that the Bellet groupe? A Yes, sir.

Q And I show you a proxy and ask you if that was enclosed with that letter? A Yes, sir.

Q And the envelope? A Yes, sir.

Mr. Glauberman: I offer those in evidence.

(Paper marked Exhibit D. 3 of this date.)

Q That proxy referring to part of Exhibit D. 3, went to Alfred H. Stahl, Henry Louden and Leon London, is that correct? A Yes, sir.

Q Which appointed them as proxies or any one of them to vote for the undersigned at a meeting of April 17th, is that correct? A Yes, sir; the proxy says so.

Q Do you know how many proxies were received by that committee? A On the day prior to the election they had about sixty or sixty-five thousand.

The Court: Running to them?

The Witness: Running to them.

Q Do you know Dr. Stahl? A No, sir.

Q Do you know Mr. Louden? A Yes, sir.

Q Do you know Mr. London? A Yes, sir.

Q Were you present at a meeting of April 17th at a stockholders meeting in the Robert Treat Hotel? A Yes, sir.

Q Did you see Mr. London there? A No.

Q Did you see Mr. Louden there? A No.

Q Did you see Dr. Stahl there? A I don't know Dr. Stahl.

Q Do you recall a gentleman asked to be introduced, Mr. Augenblick, by the name of Mr. Louden? A Yes, sir; that was after the meeting.

Q You saw him in the Robert Treat Hotel? A Yes, sir.

Q I introduced you to Mr. Louden? A I do not recall that.

Mr. Ruback: I do not think this is proper examination of a man's own witness. I think there should be some limitation?

The Court: Go on.

Q You were introduced to Mr. Louden after the meeting is that correct? A Yes, sir.

Q You saw Mr. London after the meeting? A Yes, sir.

Q In the Robert Treat Hotel? A Yes, sir; in the meeting room.

Q In the meeting? You did not know Mr. Louden before you came to the meeting, is that correct? A No, sir. Yes, sir; I did know Mr. Louden. They introduced me to Mr. Louden and Mr. London in the lobby of the Robert Treat Hotel about a half hour prior to the meeting.

Q Did you tell them to stay out of the meeting? A I did not tell them so, but it was so agreed among themselves not to go to the meeting.

Q They came to the meeting and met you in the lobby, is that correct?

The Court: Came to the hotel.

The Witness: They came to the hotel and met me in the lobby of the hotel.

Q And then you went alone to the meeting, is that correct? A Yes, sir.

Q And you stated that you represented 100,000 shares—(interrupted).

The Court: What?

Mr. Glauberman: You stated that you represented 100,000 shares.

The Court: Stated where.

Mr. Glauberman: At the meeting.

The Court: You were out in the lobby in the last question.

Q After you met—withdraw the question. After you met Mr. Louden and Mr. London in the lobby where did they go? A They remained out there in the lobby until after the meeting was over.

Q And where did you go? A I was at the meeting.

Q Do you recall stating at the meeting that you represented 100,000 shares? A I said—(interrupted).

Mr. Ruback: I object. This gentleman was not one of the proxies. Nothing he said at that meeting can bind any other stockholder.

The Court: It is all in the record. You have introduced the record and it is there.

Q After the meeting was over, Mr. Augenblick, did you meet Mr. Louden and Mr. London and Dr. Stahl in the hotel? A I met all of those gentlemen in the lobby of the hotel before the meeting. I would like to correct my testimony.

Q After or before? A Before.

Q Did you meet them after? A Yes.

Q And you met them before? A Yes, sir.

Q Did you tell them to wait down in the lobby for any call, that you might need them? A No, sir. When I met them in the lobby of the hotel they told me that they had agreed among themselves not to appear at the meeting because they did not think that the meeting would be a legal meeting and Mr. Markley had resigned and there would be no voice to represent the 172,000 shares that he held as trustee.

Q They did not know—(interrupted).

The Court: Do not argue now. I will have to ask you to put your questions as you are obliged to on direct.

Q Where are those proxies? A I have about 60,000 of them here.

Mr. Glauberman: I wish to offer them at this time in evidence. I will try to connect it up later to show that those proxies were there at the meeting and for that purpose it may become very material for your Honor in deciding this question whether there was a legal meeting that night in the Robert Treat Hotel.

(Paper marked Exhibit D. 4.)

LOUIS STEIN, sworn.

Direct examination by Mr. Glauberman.

Mr. Glauberman: I will prove by him that those proxies were there.

The Court: Which proxies?

Mr. Glauberman: Either Mr. Louden or Mr. London or both.

Q What is your profession? A I am an attorney-at-law.

Q With whom are you associated? A With Isadore Glauberman.

Q Do you recall being at a meeting on May 17th in the Robert Treat Hotel? A Yes, sir; I was at the stockholders meeting.

Q Do you recall there had been a meeting on January 14th? A I was at the meeting of January 14th held at the Chancery Chambers in Jersey City. I was also at the adjourned meeting that was held at the Robert Treat Hotel several days later.

Q Do you know Mr. Leon London? A Yes, sir; I know Mr. London. In fact I—(interrupted).

The Court: Do you know him?

The Witness: Yes, sir; I did.

Q When and where did you first meet him? A First time I met him was on the first—I think at the first meeting, I think the 14th of January, and the second time was the adjourned meeting that was held in the Robert Treat and the third time I met him was at the April 17th meeting.

Q Where did you meet him, Mr. Stein? A I met him in the meeting room of the—at the meet-

ing room where the meeting of the New Jersey Bankers Securities was held at that night.

Q Can you tell us whether Mr. London came in after the ballots were cast or before?

Mr. Ruback: I object. It calls for a conclusion.

The Court: Find out when he came there.

Q Do you remember when Mr. London came in in the meeting room in the Robert Treat Hotel? A Yes, sir; I saw him before the meeting started in the meeting room and then subsequently he left. When Mr. Lum came he left the meeting room. Where he went I didn't see, but I saw him go out.

Q Did you see him come back to the meeting room? A I spoke to him after the meeting.

Q Did you see him in the meeting room? A I did, just as the meeting began. Then he walked out; after Mr. Lum had taken the chair and called the meeting to order he walked out.

Mr. Ruback: No cross examination.

The Court: The Master said that he had impounded these proxies. Are they here? Did you ask them to be produced?

Mr. Glauberman: I got Miss Matey here now.

The Court: Is she the custodian?

Mr. Glauberman: I don't know whether she is the custodian, but she had charge of it.

CHARLES J, RYAN, sworn for defendant.

Direct examination by Mr. Glauberman.

Q What is your business, Mr. Ryan? A I am in the oil business.

Q With what firm are you connected? A Andes Petroleum Corporation.

Q Are you connected with any brokerage firm? A No, sir.

Q How many shares do you own in the New Jersey Bankers Securities Corporation? A Twenty-five.

Q Do you recall when you became connected with the stockholders' protective committee? A I would say in August or September of last year when the committee was organized by me.

Q Who all were on that committee? A A Mr. Louden, Mr. Humbert, Mr. Winston and myself.

Q Was that the committee that sent out a letter asking for ten cents that was referred to in the previous examination? A Yes, sir.

Q What did you do with that money? A Deposited it in the Trade Bank of New York.

Q Who had authority to draw on that money? A Mr. Humbert and myself representing the committee.

Q How much money did you collect? A In the neighborhood of $1,200.

Q What did you do with that money? A Majority was spent for circularizing stockholders, sending out proxies and letters.

Q Which letter? A The letter calling the stockholders' meeting in January, I believe.

Q You have reference to the letter of Decembr 30th that was sent out that is in evidence and marked Exhibit D. 1? A I have.

Q Was there any surplus left in that treasury? A At the present time, no.

Q At any time after the meeting of January 14th was there any money left over in your hands? A Yes, sir.

Q What did you do with that money? A We paid it to Mr. Samuel Nirenstein for the expenses he had incurred.

Q How much money did you turn over to him? A All told?

Q All told. A Majority of the money was paid to him because he had to pay all the bills for printing and mailing.

Q How much? A How much? The whole $1,200, with the possible exception of say $100. $1,100 at least was paid to Mr. Nirenstein.

Q On what representation did you furnish that money? A He sent us bills for stamps, printing, mailing and addressing and so on. As the money was turned in we turned it over to him and he paid the bills. According to our record there is a small balance still unpaid.

Q Mr. Ryan, do you recall when you retained Mr. Nirenstein—who retained Mr. Nirenstein? A The committee.

Q Who of the committee? A Who?

Q Yes. A I presume the four of us, Mr. Winston, Mr. Louden, Mr. Humbert and myself.

Q Did you know Mr. Nirenstein before? A I had known him for several years. He was a neighbor of mine, on the same floor in the office building.

Q Did you have any arrangement with him as to the fee? A Originally we were to pay him a fee.

Q Of how much? A $500.

Q Now, Mr. Ryan, do you recall when the committee retained Mr. Glauberman and under what circumstances? A The committee decided that counsel in Jersey should be retained and Mr. Nirenstein and myself made one or two trips to Newark and Jersey City, I think, to interview some attorneys and we were unsuccessful in getting anybody and Mr. Nirenstein continued the efforts and finally came to the committee and said he had secured Mr. Glauberman and asked the committee if Mr. Glauberman was agreeable, and Mr. Glauberman, as I recall it, was present at one of the meetings subsequent to that time and conferred with the committee and he was appointed to represent us in this case.

Q Now at the time you retained Mr. Glauberman what arrangement did you have with him as to fees? A I do not recall that we had any arrangement with Mr. Glauberman for fees.

Q Did Mr. Nirenstein, without Mr. Glauberman make any arrangement with you—did Mr. Nirenstein in behalf of Mr. Glauberman make any arrangements with you as to his compensation? A As to Mr. Glauberman's compensation?

Q That is right. A If I recall it correctly Mr. Nirenstein told us before we met Mr. Glauberman that Mr. Glauberman would require a fee of $200, but that was contingent upon the fact that the $200 being left after we had circularized the stockholders, and as it stands there was no $200 and there is still a deficit.

Q You never paid any money to Mr. Glauberman? A No.

Q And your committee has no arrangement? A No, sir.

Q As to paying him any sum or any sums in the future? A No, sir.

Q As a matter of fact, Mr. Glauberman never spoke to you about fees, is that correct? A No, sir.

Q Now, Mr. Ryan, do you recall on January 14th a meeting of the stockholders—January 14, 1930—a meeting of stockholders in the Chancery Chambers in Jersey City? A Yes, sir; very well.

Q Were you chairman of that meeting? A I was.

Q How were you elected chairman? Will you please tell us? Did you appoint yourself or did the stockholders elect you? A No, sir; the stockholders elected me, I believe.

Q You were one of the proxies, weren't you? A Yes, sir.

Q Who were the other proxies, do you recall? A Mr. Winston, Mr. Humbert, Mr. Louden and myself.

Q And at that meeting did you appoint inspectors of election? A We did.

Q Do you recall who was appointed by you as inspectors of election? A I believe that gentleman behind you.

Q This gentleman? A These two gentlemen here, I believe, if I recall their faces.

Q What is the name, Samuel B. Feld—(interrupted).

The Court: What is it you want?

Mr. Glauberman: I am going to prove a legal election in January.

Q Then what happened at the meeting of January 14th? Were directors elected then?

Mr. Ruback: I object. That is a fact to be found by your Honor.

Q Was an attempt to elect directors made?

The Court: What happened?

Q What happened at that meeting of January 14th? A It consisted mainly of speech making, but we were finally successful in taking a vote and according to the report sent in by the tellers a majority of the stockholders had voted for the directors.

Q January 14th? A No, sir.

Q You are talking about the adjourned night. A Yes, sir. You are talking about the first night?

Q Yes. What happened the first night? A I think if I recall correctly there were several propositions proposed and one was whether or not the company should be continued.

The Court: I am not interested in that.

The Witness: Nothing to do with the election, your Honor.

The Court: No election that night?

The Witness: No, sir.

Q And the meeting was adjourned to some other night in Newark at the Robert Treat Hotel. A Yes, sir; right.

Q What date was it adjourned to, do you recall? A I believe it was two nights afterwards.

Q January 16th? A Yes, sir.

Q And at that meeting were there nominations made, as you recall—were nominations made for directors of the New Jersey Bankers Securities Company? A If I recall correctly the nominations were made on the 14th.

Q And what happened on the 16th? A And on the 16th the election was held.

Q Do you recall whether a printed ballot was prepared for January 16th of all the names that were nominated? A Yes, sir; mimeographed copy was prepared.

Q How many names about, do you recall? A I should say about twenty or twenty-two.

Q All those that were nominated. A Yes, sir.

Q Do you recall as to any motion in reference to the number of directors to be elected? A A resolution was finally passed that nine directors be elected.

Q How many of those proxies were present at that meeting of January 16th? Understand my question? The proxies, not the stockholders. A Three.

Q Who were there? A Mr. Winston, Mr. Louden and myself.

Q Do you recall any statement made by Mr. Louden with reference to his being on the proxy committee? A I do not recall any statement, but—except that he got up and resigned and he gave me his written resignation dated the 14th.

Q On the 14th he gave it to you? A Dated the 14th.

Q Dated the 14th. When did he give you that? A On the night of the 16th.

The Court: You also have a stenographic report?

Mr. Glauberman: It is too bulky, if your Honor please.

The Court: I do not care whether it is too bulky. The question is whether we wouldn't get the facts more accurately. You

see, you have the written report and here you have the gentleman's best recollection which is always faulty with all of us.

Q Now, Mr. Ryan, who voted—who of the proxies voted? A Mr. Winston and myself.

Q How many shares did you represent, if you recall? A How many shares did those proxies represent?

The Court: Are the proxies here?

Mr. Ruback: I object. The better evidence being available I ask that that be offered.

The Court: You offer the proxies?

Mr. Glauberman: I offer the proxies.

The Court: The proxies are in. Give them a number.

(Proxies marked Exhibit D. 5 of this date).

The Court: How many shares were represented by these proxies, if you calculated?

The Witness: My recollection was 150,000.

Q That didn't include Mr. Markley, did it? A No, sir.

Q Do you recall Mr. Markley being present at that meeting? A I do.

Q And then you voted. A Yes, sir.

Q Do you recall who were elected that night, the names? A Hyman Kramer, Roscoe Strickland, Samuel Silberstein, Samuel Kappel, Frederick Christie, Charles Ryan, Samuel Kipnis, Abraham Quint and Joseph Socolof.

Q After the meeting of January 16th did the nine men that were supposed to have been elected

on that night—did they hold a meeting? A They did.

Q How many days after that, do you recall? A My recollection is the next day or the second day following.

Q What was the vote cast that night, do you know? A The vote cast that night at the stockholders meeting?

Q Yes. A No.

Q You were chairman.

Q Yes, sir; I haven't got the figures.

Q Where was that meeting held of those nine men?

The Court: The directors meeting, the old directors.

The Witness: At the office of Orvis Bros. & Co. in Academy street.

Q Whose private office is that? A Mr. Strickland, one of the directors, is the manager of the company.

Q Did you hold an organization meeting that night? A We did.

Q And who were elected officers? A Mr. Strickland was elected president, Mr. Christie vice president, Mr. Silberstein treasurer, Mr. Kramer secretary and Mr. Ryan assistant secretary.

Q Do you recall any resolutions that were passed at that organization meeting? A Mr. Isadore Glauberman was retained as counsel for the company and I believe a resolution was passed authorizing to take certain steps on behalf of the board of directors in the interest of the stockholders and the company. What they were I do not recall.

Q Did you hold any other meeting after the first meeting? A Yes, sir; we had several meetings, probably a dozen.

Q Probably a dozen? A Probably.

Q How many meetings did you hold prior to April 17, 1930? A I cannot say exactly; ten or eleven.

Mr. Glauberman: I have a copy here, not the original, of the minutes of those meetings. I would like to offer it in evidence, if your Honor please, of the board of directors meeting. The purpose of it, if your Honor please, is this, it is not binding whether this board of directors have been legally elected or not, but I wish to show the activity of the board as one of the elements.

Mr. Ruback: I object.

Mr. Glauberman: May I have it marked for identification, if your Honor please?

Mr. Ruback: No objection to that. I will object if at any time the offer is made.

The Court: No. You say you have something there. I don't know what it is.

Q Were you elected the assistant secretary of the board of directors? A I was.

Q Who kept the records of the meetings? A I did.

Q I show you certain papers and ask you —(interrupted).

The Court: How did you keep your minutes?

The Witness: Typewritten form. I wrote them out after I got back to my office, taking notes at the meetings.

The Court: Loose leaf?

Witness: Yes sir.

The Court: In a minute book?

Witness: I haven't any minute book yet.

The Court: These papers shown to you by Mr. Glauberman, are they the loose leaf minutes, is that what you mean?

Witness: Yes, sir; they are copies of the minutes.

The Court: They are not the originals?

Witness: No, sir. The originals haven't been completed yet. We are preparing a book.

The Court: I am not speaking of the book, but are these the minutes you made from your notes?

Witness: That is right, yes, sir.

The Court: Of the original minutes of the meeting.

Witness: Yes, sir.

Q And those are the minutes that you mailed to me the other day. A Yes, sir.

Mr. Glauberman: I offer them in evidence.

(Paper marked Exhibit D. 6.)

Q On April 17, Mr. Ryan, did you attend a stockholders meeting? A Robert Treat Hotel?

Q That is right. A Yes, sir.

Q After that meeting did those men mentioned before hold any meetings? A Yes, sir.

Q What meeting did they hold, if any? A They held a meeting and elected officers.

Q Which officers did you elect? A The same officers were re-elected.

Q And what else did you do, if you recall? A I do not recall. I probably would have to refer to—(interrupted).

The Court: The minutes?

Witness: Right here.

The Court: Do they contain them?

Witness: Yes, sir.

The Court: He says he kept minutes and they are there.

Witness: A resolution was passed.

The Court: No.

Q Mr. Ryan, before you became chairman of the protective committee did you ever know—did you know Mr. Weinberger? A No, sir.

Q When did you meet Mr. Weinberger? A There was a meeting of the stockholders of the company at my office in either January or December and at that meeting somebody invited Mr. Weinberger to come. That was the first time I saw him.

Q You never had met him before? A No, sir.

Q Had you communicated with him? A No, sir.

Q Before? A No, sir.

Q Did he communicate with you? A No, sir.

Q What meeting was that, if you recall, when you first met Mr. Weinberger? A Why, it was on—about the time that the letters have been sent out calling a stockholders meeting and as I recollect the committee felt that a meet- of the larger stockholders, sort of informal gath-

ering, should be called in order to talk over plans for reorganization, if such a thing was possible. I personally did not ask Mr. Weinberger to come. I don't know who did.

The Court: You mean the one—(interrupted).

Witness: In January.

The Court: At which the first board was elected?

Witness: Yes, sir.

The Court: Just before that?

Witness: Yes, sir. About the time the letters were sent out calling that meeting, either before the letters or after. I do not recall.

Q Do you recall whether Mr. Bellet was there? A Yes, sir; Mr. Bellet was there.

Q Do you recall whether Judge Blow was there? A Yes, sir; I believe he was there that day.

Q He was a large stockholder of the company? A Yes, sir; he said he was.

Q Do you recall anybody objecting to Mr. Weinberger's presence at that meeting in your office? A Yes, sir.

Q And what happened? A Why, I believe that somebody got up and said they didn't think Mr. Weinberger should be present at this particular meeting and if I recall correctly Mr. Weinberger asked for an opportunity to say a few words to the gathering and then he retired—and he addressed himself to the meeting and went out.

Q Was that Harry or Joe? A Harry.

Q Was Joe Weinberger there? A I couldn't say. I don't know whether I know the gentleman or not.

Q Before the meeting of January 16th do you recall another meeting that was held in the Robert Treat Hotel? A I do.

Q What meeting was that? A That was a meeting in response to a letter sent out.

Q By whom? A By the committee or members of the committee suggesting—(interrupted).

Q To whom was it sent? A Stockholders owning 500 shares or more—suggesting an informal gathering to talk over the matter of the election of the directors.

Q Do you remember whether Mr. Weinberger was present then? A I believe he was. I wouldn't say for sure.

Q Who was chairman of that meeting? A I believe I was.

Q Do you recall any plans were adopted at that gathering? A It seemed to be the concensus of the stockholders present that a board be elected consising of large stockholders of the company and not including bankers or brokers and somebody suggested lawyers.

The Court: Not to be included?

Witness: Yes, sir.

Q What did the gathering decide? A There was a slate of eight or nine or maybe fifteen names that were tentatively selected for consideration of the stockholders at the meeting of the 14th.

Q Now, Mr. Ryan, do you know where the committee got the list of stockholders that owned 500 shares or more? A I have been informed

they got it from the secretary of the company—from the office of the company.

Q You mean Miss Matey, secretary to the receiver? A I do, yes, sir.

The Court: Secretary of the company?

Mr. Glauberman: She is secretary of the receiver.

The Court: Employed by him?

Mr. Glauberman: Yes, sir; I think so.

Q Mr. Ryan, did you know any of the gentlemen that were elected to the board of directors prior to their election? Did you know any of them? A The first I met two of them was at a meeting in my office in December.

Q Who were they? A Mr. Silberstein and Mr. Kipnis.

Q When did you meet the others? A I do not recall having met any of the others until the night of the election.

Q What election? A January 16th.

Q Mr. Ryan, did you acquaint yourself or familiarize yourself with who those men are, what their business is and how many shares they own in the company? A Yes, sir, the committee looked into that from the information that was available, their standing as stockholders.

Q Can you give us now, if you have any memorandum with you, who those men are that were elected?

The Court: We have got the names.

Q Their business and the amount of shares they owned in the company? Have you got such information with you? A I have. Mr. Kipnis, president of the National—(interrupted).

Mr. Ruback: I object. I do not think it at all appears that this information is original—furnished to him by others—unless you permit me to cross examine him.

The Court: I do not see how your cross examination would make it any better.

Mr. Glauberman: I will withdraw the question.

Cross examination by Mr. Ruback.

Q You now have 25 shares? A I have.

Q And did you ever have any more? A I did.

Q How long have you been the holder of only 25 shares? A Over a year.

The Court: You got them last July?

Witness: I imagine about a year ago, I got these 25 shares.

Q Before or after the company—(interrupted). A I don't know. When they were selling about $16 a share.

Q That is two years ago. A My recollection of that may be wrong.

Q If you got them last September that would be after the receiver was appointed? A Yes, sir.

Q Year ago last September? A Yes, sir; I guess so.

Q You have been quite active, Mr. Ryan, in the proposed reorganization of this company and the recommendation of this board of nine men? A I have devoted some time to it, yes, sir.

Q Considerable time? You have attended a great many meetings and written a great many letters? A Yes, sir.

Q Gone out of your way to express your views. Have even written to the Governor of this state, haven't you? A That is right.

Q And during this entire period of your activity you have had only twenty-five shares? A When I started I believe I had fifty, when I wrote to the Governor.

Q From the time you began your activities in behalf of this group of men you had no more than fifty shares, is that right? A Yes, sir.

Q For which you paid no more than sixteen dollars a share? A Sixteen or seventeen.

Q Have you personally made any contribution to the protective committee fund? A I did.

Q How much? A On the basis of ten cents a share.

Q No more? A No.

Q Have you personally spent any money other than what you contributed on that basis? A Except car fare and so forth coming over to Newark.

Q Now, when did that so-called protective committee meet for the first time? A In either August or September of last year.

Q Where? A At my office.

Q Did you call that meeting? A I did.

Q Did you select the other three men who were then on that committee? A I did not.

Q Who selected them? A At that meeting, if I recall there was at least twenty large stockholders, there were at least twenty large stockholders present and four men were elected as the committee to represent the stockholders.

Q Who invited the gentlemen that attended at your office that day to be present there? A I believe I did.

Q By letter? A No I don't think so. I think it was by telephone.

Q You called up twenty men and asked them to come to your office? A No; I called up some.

Q How did you know of them? A Their names and so forth I got from Mr. Samuel Nirenstein who was my neighbor, next door.

Q Had Mr. Nirenstein at that time already been retained by anyone? A I couldn't say. I don't know.

Q Had Mr. Nirenstein proposed to you the calling in of some stockholders? A No, sir; I proposed it to him when I found—(interrupted)

Q What was your aim or purpose in calling these men together? A I thought something ought to be able to be done in order to recoup our losses.

Q That was your sole aim, wasn't it, to get back what you had paid into this company? A Yes, sir.

Q Twenty-five times fifteen or sixteen dollars? A Yes, sir.

Q How many meetings have you attended in the aggregate since last July, stockholders meetings, concerning the New Jersey Bankers Securities? A Stockholders meetings, too?

Q Yes. A You mean committee meetings and everything?

Q Committee meetings, stockholders meetings, court sessions. A Maybe thirty.

Mr. Glauberman: How is that material?

The Court: It is very important to me. This man, who only has twenty-five shares for which he paid such a terrific price to show such loyalty to his own cause and other stockholders, ought to be permitted to tell us. I do not see why you should object. I do not see how your mind works.

Q Now, when you first became interested in this proposed—(interrupted).

The Court: I want to know who this man is.

Q When you first became interested in this plan of reorganizing the company and turning it over to Mr.—the new group of directors, you knew that the affairs of the company and its property were in the custody of the Court of Chancery. A I knew it had been in and out of the court a couple of times.

Q You knew that the property was then in the custody of the Chancellor's receiver. A I believe so.

Q And you knew that they were taking care of the assets of the company, reducing them to cash and keeping them on deposit. A I wouldn't say I knew they were taking care of them. I knew they were handling the matters.

Q Did you seek in any way to inform yourself as to what attention was being given by the receivers to the property of this company? A I don't know whether I ever had any correspondence with the present receivers, but I had correspondence with the previous officers of the company, Mr. Edwards and Mr. Jelin, and several more.

Q Did you do anything since July 25, 1929, to inform yourself as to what property the receivers had held? A I couldn't say whether I had any correspondence on the subject or not.

Q Well, did you do anything other than engaging in correspondence to keep yourself informed as to the condition of this estate? A No, sir.

Q You never interviewed Mr. Stamler or Mr. LaVecchia? A Yes, sir; I had a meeting with Mr. Stamler and Mr. LaVecchia, I believe with Mr. Nirenstein after the committee was formed.

Q Did you inquire of either gentleman to inform you as to what—(interrupted).

The Court: Why?

Mr. Ruback: I want to show this man is not interested in the welfare of this company.

The Court: He is not?

Mr. Ruback: He is not.

Q You have from time to time, Mr. Ryan, received notices from the receiver of proposed sales of assets? A That is right.

Q Of this company, have you not? A Yes, sir.

Q You received notice of the proposed sale of the Hobart Trust Company? A I certainly did.

Q And did you attend to the hearing on that purchase? A I don't know whether I was present or not, but I believe I wrote to the Court my views.

Q You did not come to court in order to oppose the sale? A I was unable to be present that day.

Q You received notice of the sale of the Perth Amboy Bank stock? A I did.

Q Did you appear on the return of that notice? A I do not recall whether I was here that day or not. I have been here so often I do not recall each date.

Q Did you ever appear at any hearing concerning the sale of the Lebanon Bank stock? A I couldn't say.

Charles J. Ryan, cross.

Q Did you ever ask anyone in your behalf as a stockholder to appear at any of those meetings concerning the assets of the New Jersey Bankers Securities? A I think in regard to some of those hearings that I filed some papers as chairman of the stockholders protective committee opposing the—(interrupted).

The Court: Wait. Opposing what?

Witness: Whatever assets were to be disposed of, requesting that they be not sold. I haven't any copies of these papers, but they were there at the time.

Q Mr. Ryan, you were sufficiently interested to complain to the Governor in writing? A That is right.

Q Of the conduct of the New Jersey Bankers? A That is right.

Q Why weren't you sufficiently interested to attend any of the hearings involving the disposition of the property of this company?

Mr. Glauberman: I object.

The Court: Counsel has said he is going to show me this man is not interested in this company.

Mr. Glauberman: I do not object to that.

The Court: Is this line of testimony going to lead up to that, to show he is not interested in this company, but interested for someone else?

Mr. Ruback: That is the object of it. I may fail in it. That is my purpose.

Q (Question read.)

A I did attend some of the hearings. Which ones I couldn't say.

Q And were you represented by counsel? A Yes, sir.

Q Always? A Yes, sir; I believe so.

Q By whom? A Samuel Nirenstein.

Recess.

Q You have been connected with the Andes Petroleum Company for how long? A Five or six years.

Q Have you ever been connected with a stock brokers office known as the Adelson & Ryan? A No, sir.

Q Do you know of any such concern? A No, sir.

Q Were you ever a member or partner of any stock brokerage house? A No, sir.

Q At no time? A No.

Q Were you ever connected with Knoblauch & Company? A No, sir.

Q Were you ever connected with any company or partnership which engaged in the business of selling stock? A No.

Q Did you ever have anything to do with the sale of the stock of the New Jersey Bankers Securities in 1927 and 1928? A No.

Q In no way? A No.

Q Now preliminary to the first stockholders meeting that was held in January of this year do you know whether anybody canvassed the stockholders for the purpose of securing those proxies running in favor of Louden, Humbert, Winston and yourself? A Not that I know of. The only thing that I know was the letter we sent out.

Q You do not know of any personal solicitation? A No, sir.

Q No one was employed to make a house to house canvass on it? A By the committee? Not that I know of.

Q Do you know of anybody being employed by anybody else for that purpose? A No.

Q Now, at the stockholders meeting, Mr. Ryan, to which were invited stockholders of the New Jersey Bankers Securities owning 500 or more shares— A That is right.

Q Is that right? —where was that meeting held, at your office? A Robert Treat Hotel.

Q Did you attend? A I did.

Q Did you hold 500 shares at that time? A No.

Q How was it you were there? A Because the committeee of which I was chairman called the meeting.

Q You were the smallest stockholder that attended that meeting, weren't you? A I wouldn't say that; I had twenty-five shares. There may have been some with less there; I don't know.

Q How many shares did Mr. Louden have? A I don't know.

Q No idea? A He was a member of the committee. I don't know how many shares he had.

Q Was that the meeting from which Mr. Bellet was barred? A That is right.

Q Why? A He wasn't a stockholder of record, so he said.

Q Did you before admitting anybody to that meeting inquire from the secretary of the company whether they were stockholders of record? A As I recall it we had a list from the office

of the company of the stockholders owning 500 shares or more and as each person came into the room we had a girl appointed to ask them the name and address and number of shares and checked against a list.

Q And Mr. Bellet didn't satisfy you that he had a right to attend? A No, sir.

Q Do you know how many persons were present approximately? A I don't recollect.

Q Did you keep any minutes of that meeting? A No.

Q Why not? A It wasn't a meeting; it was just an informal gathering of the stockholders —conference.

Q It was at that conference that the slate of nine directors was proposed and adopted. A No, sir.

Q Any discussion as to who would be the directors in the event of reorganization? A Yes, sir.

Q Did that discussion involve the identity of the persons—names? A There were names proposed at this meeting.

Q Any of these nine men? A Probably, yes, sir.

Q How many of the nine? A I couldn't say offhand; maybe four or five.

Q Didn't you regard that committee of sufficient importance to keep minutes of its meeting? A No, sir; just conferences.

Q Have you had any secret meetings concerning the re-organization of this company? A No, sir.

Q None at all? A No.

Q No meeting from which stockholders who wanted to attend were excluded? A No, sir.

Charles J. Ryan, re-direct.

Q The meeting from which you excluded Mr. Bellet wasn't a secret meeting? A No, sir.

Q Have you a copy of the letter you wrote to Governor Larson? A No, sir.

Q Kept a copy, did you? A Have it in my office.

Q You saved the copy? A In my office.

Q In fact, you received a reply from the Governor, did you not? A Yes, sir.

Q That reply was printed by you on the reversed side of the letter sent to the stockholders? A Yes, sir.

Q Have you got that letter? A No, sir.

Q Since sending that circular letter to the stockholders you have been criticized by the Governor for having used that reply for the use you did, have you not? A No, sir.

Q I would like to see that letter, Mr. Ryan. A I haven't got it.

Q On the reverse side of which you got the Governor's letter. A I haven't got it.

Q Where is it? A In my office in New York.

Q Have you a copy? A I had a copy of it. I haven't got it because I wasn't at my office.

Mr. Ruback: I will close my cross examination at this point asking that—this witness said a little while ago, "I have that letter in my office."—It will be brought here.

Re-direct examination.

Q Mr. Ryan, why did you, a stockholder owning twenty-five shares, become a member of the stockholders protective committee and go to all this trouble? What was the purpose?

The Court: He paid fourteen or fifteen dollars for his stock. He had that much in it. It may have been of as great importance to him as to another man wealthier than he who had five thousand. That doesn't need any proof. I am not interested in how many shares he held so long as the man is vitally interested in the number that he holds.

Q Mr. Ryan, at the meeting that you attended of the board of directors that were elected what plans, if any plans were considered —what plans were there as to the future of this company? A No plans were adopted by the board.

The Court: No. What was discussed?

Q Considered—discussed? A The first idea of the board seemed to be to endeavor to get the company out of the hands of the receiver.

The Court: That is not what he is asking. He is asking for the plans of operation in that event.

The Witness: The consensus of opinion seemed to be that after the company as turned over to the board of directors it would endeavor to engage competent people to advise it in the management of the corporation and its affairs.

Q Have you now any fixed plan as to running this company? A I, no.

Q Has the board, to your knowledge, any fixed plan to run this company? A Not to my knowledge as a board.

Q Can you tell us from the minutes that were introduced in evidence of the directors whether anybody was elected by the board in the place and stead of Mr. Markley? A Yes, sir; a gentleman was elected as trustee in the place of Mr. Markley.

Q Who was that? A Mr. Stafford.

The Court: Read the question.

(Question read.)

Do you mean that? Is he a member of the board? Is Mr. Markley a member of the board?

The Witness: No.

Mr. Glauberman: I will withdraw the question.

The Court: The question assumes Mr. Markley was a member of the board. Have you in mind Mr. Markley's resignation?

The Witness: It is in the minutes, if your Honor please, of the board of directors.

The Court: Won't you make it clear then?

Q Did the board of directors—(interrupted)

The Court: No. Did Mr. Markley resign? That does not appear.

Q Do you know whether Mr. Markley resigned as trustee for Mr. Weinberger? A I saw a copy of the letter tendering his resignation and also heard him say he had resigned at the stockholders meeting.

The Court: Have you got that?

Mr. Ruback: I have the resignation. I am going to offer it later.

Mr. Glauberman: I offer it in evidence, the resignation of Mr. Markley dated April 15, 1930.

(Paper marked Exhibit D. 7 of this date.)

Q Mr. Ryan, I show you the minutes introduced in evidence marked Exhibit D. 6. Turning to the minutes of April 28, 1930, could you tell us whether any action was taken by the board with reference to that resignation? A A resolution was passed accepting the resignation of Mr. Markley and a series of resolutions and preambles were adopted appointing Mr. Bernard L. Stafford in his place.

The Court: Who is Mr. Stafford, a former director?

The Witness: Yes.

Q Mr. Ryan, do you know whether prior to April 28th or April 25th—prior to April 17th, the meeting held by the stockholders in the Robert Treat Hotel did the board of directors receive any letter from Mr. Markley tendering his resignation? A No, sir, it did not.

Mr. Ruback: May I have the stockholders letter, the first one?

The Court: You say Mr. Markley's resignation did not reach the board of directors?

The Witness: No, sir.

The Court: Until when?

The Witness: Why, I don't know whether a copy was ever delivered to the board of directors.

The Court: How did it come to your notice?

The Witness: Mr. Glauberman happened to have a copy of it. I believe. It was a copy of the copy Mr. Weinberger got.

The Court: How do you know it wasn't? That it wasn't delivered to the board of directors?

The Witness: The directors I spoke to hadn't received it. It wasn't delivered to the board as a body. I don't know of any director who received it.

The Court: Don't know of any officer or alleged officer?

The Witness: No, sir; I understand it was served on the receivers, I don't know.

Q Did you attend the last stockholders meeting at the Robert Treat Hotel? A I did.

Q When did you learn that Mr. Markley had resigned his position, at what date? A I was advised, I think, two days before.

Q You are the active secretary of the—(interrupted) A Assistant secretary.

Q Assistant secretary. Did you make any attempt to call the board together to act on that resignation? A Did I make any attempt? No. It wasn't my position to make an attempt.

Q You knew two days before the meeting that that 172,000 shares held by Mr. Markley might be an important factor in determining the validity of the meeting—

Mr. Glauberman: I object. The minutes speak for themselves.

Q What is your answer? A What is the question?

Q (Question read.) A I knew it was an important factor.

Q I beg pardon? A I knew it was an important factor.

Q Why didn't you take some action to call your so-called board together to act on the resignation? A The board could do nothing regarding the resignation as to what they had to do with the stockholders meeting to be held two days after, because Mr. Markley was a stockholder of record twenty days before that meeting.

Q Your board has since that meeting seen fit to select another in place of Mr. Markley. A That is right.

Q Why didn't you do that within those two days preceding the last meeting? A We didn't see the necessity of it.

Q Did you confer with anybody about it? A I—no.

Q You did nothing? A No.

Q From whom did you learn that Mr. Markley had, in fact, resigned? A Mr. Glauberman.

Q Did you see the resignation? A I saw a copy of it.

Q How many other members of your nine man group, so-called board, knew of that resignation before the evening of the meeting? A A quorum, more than half.

Q More than five? A That is right.

Q In fact, they all—(interrupted)

The Court: Why do you say a quorum?

The Witness: We had a meeting when it was presented—when Mr. Glauberman presented the copy.

Q Have you the minutes of that meeting? A Yes, sir; they are in the record.

Q They are in this record that has been offered? A I believe so.

The Court: When was that?

The Witness: About two days before the meeting in April.

The Court: You mean before this election?

The Witness: That is right, April 14, 15 or 16.

Q And at that meeting was it suggested or determined that if Mr. Markley attended in person, although he had in fact resigned, his attendance would count towards a quorum. A Everybody considered that his attendance would count towards a quorum.

Q That was discussed at that meeting? A That was our understanding of the law, yes, sir.

Q That was discussed at that meeting? A Certainly.

Q Did you have counsel present at that meeting? A Yes, sir.

Q Did he so advise you? A No, he did not.

Q Was Mr. Weinberger in attendance at that meeting? A No, sir.

Q Was Mr. Weinberger in attendance at any of the meetings the minutes of which you have identified? A On the day on which Mr. Stafford was elected the meeting was adjourned sufficiently to allow Mr. Weinberger to appear and advise us as to whether or not he would be satisfied with Mr. Stafford and after he said he would he left the room and the meeting continued and Mr. Stafford was elected.

Q Now, Mr. Stafford—the selection of Mr. Stafford was first the act of your group, the nine directors; is that right? A That is right.

Q Then it was submitted to Mr. Weinberger. A That is right.

Q Who of your group suggested the selection of Mr. Stafford? A I do not recall.

Q Did you? A I, no. I didn't know the gentleman.

Q Didn't know Mr. Stafford? A No.

Q Did you vote for Mr. Stafford? A I did.

Q As a substitute of Markley? A I certainly did.

Q At the time you voted did you know that Mr. Stafford was one of the old board? A I had been informed to that effect.

Q That he was one of the only two remaining directors of the old company? A I didn't know that.

Q Didn't know that? You knew that he had been a director at the time of this early litigation, did you, concerning the New Jersey Bankers Securities? A I didn't know that either.

Q You know that Mr. Stafford is rather a close friend of Mr. Weinberger? A No, I didn't know that.

Q You know that now. A I don't know that yet.

Q What did you know about Mr. Stafford when you voted in favor of his selection as a trustee of this rather large block of stock? A The members of the board who were in favor of Mr. Stafford recommended him highly to the members that did not know him and after a process of elimination two names being left—I do not recall the other one—they both were presented to Mr. Weinberger and he said either one would be agreeable to him and then after the

meeting continued, of the two, Mr. Stafford was selected.

Q What other name was suggested? A I do not recall the name; some gentleman in New York.

Q Keep a record of the various names proposed? A No; it wasn't material. It wasn't material.

Q Did you keep the minutes of that meeting? A I did, yes, sir.

Q How many of your nine directors attended that meeting? A More than half.

Q Well, can you tell us exactly how many? A No. The records show.

Q How many of those who were actually in attendance did not know Mr. Stafford and had to be informed? A That I couldn't say.

Q Was there anybody other than yourself did not know him? A I don't know.

Q Well, you said "those of us who did not know Mr. Stafford." A Meaning myself for one.

Q Who else? A I don't know.

Q Was Mr. Stafford voted on on the same day and same occasion when his name was first proposed? A Yes, sir.

Q Didn't you take any time to investigate the man who would be the trustee of this holding? A The recommendation of my fellow directors were sufficient.

Q Sufficient to satisfy your judgment? A Yes, sir.

Q Who of your fellow directors strongly urged Mr. Stafford as a proper person?

Mr. Glauberman: I object.

Witness: I didn't take any particular note of it. I believe Mr. Strickland was one of the members who recommended him.

Q Didn't you think it was important in voting for a trustee for a stock which cost close to two and a half million dollars that you keep a strict minute of everything that was said concerning the proposed substitute? A I didn't think the names of the people considered were necessary, only the names of those who were selected.

Q You made absolutely no independent investigation before you cast your vote for Mr. Stafford? A I, no, sir.

The Court: When was that meeting held?

Witness: Probably two days after the stockholders meeting in April, 19th or 20th. The records show.

The Court: Who gave notice of the meeting?

Witness: Waiver of notice.

The Court: How many waived?

Witness: All the directors.

The Court: Does that appear in the minutes?

Witness: Yes, sir.

Q Did you see this letter of November 12, 1929, addressed to the stockholders of the New Jersey Bankers Securities, seeming to bear your name, Charles J. Ryan—did you see this letter before it was sent out to the stockholders? A Yes, sir; I prepared it.

Q It is your own composition? A Yes, sir.

The Court: What is it?

Mr. Ruback: Letter of November 12, 1929. I offer it.

(Paper marked Exhibit C. 13.)

Q In this letter addressing the stockholders you say that "In accordance with the suggestion of Governor Larson of the State of New Jersey, a copy of whose letter is enclosed herewith, a group of stockholders representing a very substantial number of shares of the New Jersey Bankers Securities Corporation met and designated the undersigned to act for them as a stock holders committee." Did you, by your reference to the suggestion of Governor Larson mean the Governor's letter, a facsimile of which is printed on the reverse side of this Exhibit C. 13? A I believe we did.

Q Now you composed this letter, did you or didn't you? A I compose that letter? No.

The Court: Governor Larson's letter.

The Witness: Certainly not.

Q No; your letter. A My letter, yes.

Q Did you by your reference to the suggestion of Governor Larson mean the Governor's letter to you printed on the reverse side of the letter that you composed? A Yes, sir; sure.

Q Did you understand that letter to be a suggestion to you to address the stockholders and collect money from them? A I believe the letter speaks for itself.

The Court: You mean the company's letter?

Mr. Ruback: Yes.

Q Will you answer that question? A Read the letter.

Q No: Did you understand the Governor's letter to be a suggestion to you to address the stockholders and collect money from them? A I understand it to be a suggestion to address the stockholders, yes.

Q Will you point out what in the Governor's letter you regarded as a suggestion to assemble the stockholders and assess them so much per share? A Governor Larson's letter says in part, "If a stockholders committee were formed they would undoubtedly have the privilege of investigating the business, etc." And I thought that was sufficient to endeavor to organize such a stockholders committee.

Q You regarded that as ample warrant to address the stockholders, mentioning the name of the Governor of this State, to ask them for money? A Not to ask them for money, no. To form a stockholders committee.

Q Well, you in this letter asked for so much a share? A Suggestion. Couldn't get along without money.

Q Now this letter to you from the Governor dated September 3, 1929, was in response to a letter by you complaining about the administration of this estate, is that right? A The letter was in response to a letter written by me to the Governor regarding the New Jersey Bankers Securities.

Q A letter by you complaining about the administration of this estate in this Court, is that right? A No, sir; I made no reference to this Court.

Q What did your letter say? A I don't know. I haven't got it with me.

Charles J. Ryan, re-direct:

Q What complaint did you have concerning the conduct of this estate either by the receivers or by the Chancellor? A No direct complaint.

Q What indirect complaint did you have? A I implied that I thought that the stockholders were not—the interests of the stockholders were not being properly protected and that some other steps should be taken in order to bring those interests up to what they were. I didn't say—(interrupted).

Q In what respect did you think the receivers of the Court failed properly to protect the interests of creditors or stockholders? A Well, I was in receipt of some correspondence from either the officers or the receivers of the company, something like Mr. Stamler's letter, I believe, in which he said the assets were worth so much and then later on I found out the assets were worth about twenty per cent. of that original figure, and putting two and two together I came to the conclusion that something was happening that shouldn't be happening and that it was wise for the stockholders to bring the matter to the Governor or anybody in the State who could rectify the matter.

Q Did you attend the hearings in this cause held last August in this court? A I don't think so.

Q Did you know that such hearings were being conducted and that an open inquiry into the affairs of the company was being held? A If the stockholders were advised by letter I probably got a copy of it.

Q Have you any recollection of being so notified? A I have no rcollection of any such information.

Q Well, before you wrote the letter to the Governor complaining of the administration of this estate why didn't you interview either of the receivers and seek information concerning the assets and liabilities of this estate? A I had received letters from the company and I had spoken to some people in the State of New Jersey who seemed to know something of the affairs of the company and putting two and two together I thought the next step was for some action of some kind and form a committee.

Q Why didn't you interview either receiver before you complained to the Governor about the administration of this estate? A I didn't think it was necessary.

Q You didn't think it was necessary or proper to inform yourself mathematically as to the figures? You are one of these nine men who had been selected to be trustees of this fund? A That is right.

Cross examination by Mr. Fitzsimmons.

Q I show you the minutes which are in evidence marked Exhibit D. 6. Referring to the special meeting held at your office, 164 Broadway—is that your office? A No.

Q Whose office was it held in? A Nirenstein, Rhodes & Nirenstein.

Q 164 Broadway, on April 28, 1930. Those are the minutes that you kept? A That is right.

Q Were five members present at that meeting? A If that is what it says, yes.

Q Did Mr. Christie know Mr. Stafford? A I don't know.

Q Did Mr. Kipnis know Mr. Stafford? A I couldn't tell you.

Q Or any of the others? A I don't know. Some of the others did, yes.

Q Where was Mr. Weinberger when this meeting was held? A He was outside the door. He might have been in the street. I don't know where he went.

Q Who invited him there to 165 Broadway? A I couldn't say. I didn't.

Q The fact is Mr. Weinberger was in another office, wasn't he? A Maybe.

Q Right in that building, on the same floor. A Might have been outside of the door, I don't know.

Q You as director voted to give practical control of this company to Mr. Stafford without even knowing him, is that right? A I voted for Mr. Stafford as trustee for 172,000 shares, if that is what you mean.

Q You depended upon your fellow directors? A Yes, sir; to a great extent.

The Court: Absolutely.

The Witness: Yes, sir; I didn't know Mr. Stafford.

Q And in the future conduct of this company would you also rely on your co-directors rather than investigate yourself as to policy in this company? A I don't care to make any statement regarding the future.

The Court: What did you say?

The Witness: I do not care to make any statement regarding the future. I might do otherwise.

New Jersey State Library

Charles J. Ryan, re-direct:

Re-direct examination:

Q Mr. Ryan, do you recall the date of April 28th that I attended that meeting? A Yes, sir.

Q Do you recall that the directors were informed by me that Mr. Stafford, when I was asked who Mr. Stafford was, I told you that my investigation disclosed that he is a large stockholder of the company, that he is a member of the bar of Passaic County? A I believe I do.

Mr. Ruback: Just a moment. I object to the form of the question. If counsel wants to testify let him take the stand and I will have an opportunity to cross examine. He is your witness.

The Court: Objection overruled.

A Yes; Mr. Glauberman did say that to the board.

Q Do you recall my informing those of you that asked me that Mr. Stafford was the former assistant prosecutor of Passaic County? A I do.

Q Do you recall your asking me whether I had met Mr. Stafford and what I think of him? A I do.

Q Do you recall that I read to you the contract providing—the contract between Mr. Weinberger and the New Jersey Bankers Securities which provided that a trustee can only vote in the interest of the company? A Yes, sir; that was read.

Q Do you recall the discussion that a member should be selected—pardon me—do you recall the discussion that the trustee should be selected

who has a personal interest in the company? A Yes, sir; we discussed that.

Q Who would be sure to come to a meeting if necessary? A That is right.

Mr. Augenblick: As I understand it, this rule to show cause is directed to all stockholders.

The Court: All stockholders?

Mr. Augenblick: I represent a lot of stockholders and want an opportunity to question this witness.

The Court: Are your stockholders parties to the suit?

Mr. Augenblick: I suppose all stockholders are parties.

The Court: I mean, have you some in?

Mr. Augenblick: On the record?

The Court: Yes.

Mr. Augenblick: No; I do not appear on record anywhere.

The Court: Who do you appear for?

Mr. Augenblick: I appear for the stockholders committee whom I represent.

The Court: I cannot recognize any special designation "stockholders committee." Who do you represent?

Mr. Augenblick: I represent the stockholders committee that was very active at the meeting at the Robert Treat Hotel.

The Court: Who do you represent?

Mr. Augenblick: Mr. Frank Hughes, Mr. Wilmet, Mr. Smeaton, Mr. Goran and incidentally I represent myself. I have a few shares of stock in the company.

The Court: That would be enough. Go on.

Cross examination by Mr. Augenblick.

Q Mr. Ryan, at the time you held the meeting in January of this year and elected the so-called board of directors, did you know that Senator Edwards and Stafford were still directors of the New Jersey Bankers Securities? A I believe I had been advised that Senator Edwards was one of the directors who had not resigned. Regarding Mr. Stafford I did not know.

Q Did you call upon Senator Edwards and Mr. Stafford and ask them to call an organization meeting to fill the vacancy caused by the resignations of the other directors? A I did not.

Q And knowing that Senator Edwards was still a director, in the face of that you organized a stockholders—(interrupted).

The Court: Sit down and do not shake your head at me. If you have objection to make, make it.

Mr. Glauberman: I object.

The Court: Let the man finish his question and then you may object, if you have an objection. This constantly getting up and grinning at me and shaking your head has got to stop. Go on.

Q In the face of that fact, that Senator Edwards was still a director of this company, you called a stockholders meeting and elected another board of directors.

The Court: That is so obvious.

Q At this so-called stockholders meeting that you had in January, 1930, was Mr. Louden present? A He was.

Q And he had a large block of proxies, did he not? A I don't think he had any proxies personally, no.

Q Was he elected a member of this board? A No.

Q Did he sit at the meeting? A I believe so.

Q Was his name put up for election? A Yes, sir.

Q Why wasn't he elected?

Mr. Glauberman: I object.

A I couldn't say.

Q Did he resign from the meeting? A From the meeting, no.

The Court: Were you here this morning?

Mr. Augenblick: Yes, sir.

The Court: We have had all this. I cannot have the same repeated. We have the history of that. If you have anything new, you may add it.

Q Did you hold any meetings of the board of directors after the Robert Treat Hotel meeting in April of this year? A Yes, sir.

Q Pursuant to the election did you hold meetings—the election in April or the election in January? A Either one or both.

Q What? A Either one or both. We considered the board still officiating.

Charles J. Ryan, re-cross.

Q Did you vote for a board of directors in the Robert Treat Hotel in April, 1930? A Did I?

Q Yes. A I voted my shares.

Q Why did you vote if you considered the board already in exisitence? A Same reason that the other stockholders voted.

Q Just because the other stockholders voted? A Same reason. In response to the letter which had been sent out presumably by the receiver or the Court, in which they notified us the meeting was being held for the purpose of re-election or checkup election or something.

Re-cross examination by Mr. Ruback.

Q Of the four persons who were proxies at the January meeting, the only two that voted were Winston and you? A That is right.

Q Louden resigned before the meeting?

The Court: We have all that.

Mr. Ruback: There is no evidence as to when he resigned.

Q He resigned before the balloting started? A Yes, sir; before the balloting was concluded.

Q He resigned before the proxies cast their ballot, didn't he? A That is right.

Q And Humbert did not appear at all at the meeting? A No, he couldn't be present.

Q He didn't appear at the meeting? A No.

By the Court.

Q What is your occupation with the company? A I am secretary and assistant treasurer of the company.

Q What is the occupation of the company? A We are in the oil production business.

Q Produce? A Yes, sir.

Q Where? A Venezuela, South America.

Q How long—you have been with the concern six years? A Yes, sir.

Q Substantial concern? A We consider it such.

Q I don't know. I thought you could tell? A I should say so, yes, sir. We are associated with the Atlantic Refining Company. They have a half interest in our property. They are one of the Standard Oil group.

Q And you are one of the Standard Oil group? A No, we are not.

Q Who are the other officers? A Gentleman by the name of Debrigard, of Cranford, New Jersey. Man named Putnam of Rye, New York.

Q Who carries on the business, you? A No. I? No.

Q Who? A Vice president, president, board of directors.

Q Who is president? A Mr. Debrigard from Cranford, New Jersey.

Q How long has he been with that company? A Him? Six years. Since it started. We have all been there since it was organized.

Q Have you a factory or works? A We have an executive office here.

Q Have you a factory or works anywhere? A No.

Q How do you produce your oil? A We have —the Atlantic Refining Company has a half interest in our property and they do the operation for us and they purchase our production at the mouth of the well.

Charles J. Ryan, re-cross.

Q Where do you live? A Westchester County, New York.

Q How long have you lived there? A Ten years.

Q Married? A Yes, sir.

Q Living home? A Yes, sir.

Q Family? A Yes.

Q How much? A Three.

Q Not enough for an Irishman? A I am too young.

Q How old are you? A Thirty-five.

Re-cross examination by Mr. Weinberger.

Q Mr. Ryan, is it not a fact that at this meeting for the purpose of designating a trustee there was submitted the name of Mr. Jacob Klein a member of the bar of New York? A Yes, sir.

Q And a stockholder owning 1,000 shares of the company? A Yes, sir; that is the name I couldn't recollect.

Q Isn't it a fact that Mr. Weinberger suggested that Mr. Klein ought not to be taken because of the fact he was the attorney of Mr. Weinberger's father-in-law? A Yes, sir.

Q There were other names, about ten or twelve in all, submitted, were there not, from the list of stockholders for the designation of trustee? A Yes, sir.

Q Submitted by whom? A By the board of directors.

Q These names were all submitted by the board of directors? A That is right.

Q All the names appearing on the stockholders list, were they not? A That is right.

Q One of the directors suggested, did he not, that the trustee should be some person in Jersey because of the fact that he ought to be known by the Court, is that correct? A I believe it is.

Q Mr. Stafford is a stockholder owning 1,500 shares of stock of the company; did you know that fact before you voted for him? A Yes, sir; I was advised of that fact.

The Court: Who submitted these names?

The Witness: The various directors suggested names of different persons who they thought might be acceptable and who they thought might serve and one by one they were eliminated.

Q They were not submitted, they were simply suggested? A That is all.

Q And they were take from the stockholders list? A Yes, sir.

Q Of the big stockholders—heavy stockholders. Was Mr. Milton Unger, a member of the bar of New Jersey and owner of 1,000 shares, suggested? A I believe his name was brought up.

Q Mr. Charles M. Myers, a member of the bar of New Jersey, suggested, and owner of a thousand and some shares? A I do not recall his name. I do not remember all the names. It may have been.

Q You do not know? A I remember Unger.

Q (By the Court.) Is that John Meyers?

Mr. Weinberger: Charles M. Myers, former corporation counsel I believe in Essex.

Q Mr. Kaplan was suggested and was objected to by myself because he was my brother-in-law, is that a fact? A That is right.

Q Mr. Strickland's name was suggested and because he was a director his name was eliminated? A That is right.

Q By the way, I think Mr. Glauberman's name was suggested, was it not? A That is right.

Q The objection to him was that he was not a stockholder, he had used better judgment. Is that right, sir? A I don't know about the better judgment. He was not a stockholder.

Q That was the objection made to him? A One of the objections.

GEORGE E. MORRISSY, sworn for defendant.

Direct examination by Mr. Glauberman.

Q Mr. Morrissy, where do you live? A 101 W. 72nd street, New York City.

Q Were you ever connected with the New Jersey Bankers Securities? A I was.

Q In what capacity? A As a director.

Q On what date did you become a director of the company? A I couldn't tell you exactly, but it was some time in the neighborhood of September, 1928.

Q Until what time did you serve as such director? A What is that? I did not understand you.

Q Until what time—until when?

The Court: I fear you have gone beyond the bounds, and I want to caution you. I

opened this case for a single purpose, that you asked it to be opened for. I am not going into—you rested yesterday afternoon and this morning you said you misunderstood me—the suggestion I made, and asked me to open the case for the purpose of putting in that proof. I am going to limit you to that.

Mr. Ruback: May I be heard on that?

The Court: The question of whether this company can be continued with safety to the public and advantage to the stockholders and as an incident of that whether you have elected a board of directors. Now if his testimony relates to that well and good, if not, the case is not open.

Mr. Glauberman: It relates to this, that I want to show that the company when the bill was filed could exist with advantage to the stockholders and therefore could today. That is my point, if your Honor please. I want to show it by the former director. I think it is open as to that.

Q Now, Mr. Morrissy, at the time that you resigned—when was that? A I believe it was in August of last year or possibly September.

Q Before the receivers were appointed or after? A After the receivers were appointed.

Q Do you recall at the time when the receivers were appointed? A I do.

Q What date was that? A Well, I tell you—I haven't thought of this case for months. The dates arn't fresh in my mind.

Q Now at the time you left the company can you tell us whether it was in the same condi-

tion that it was when you assumed the directorship?

Mr. Ruback: I object. There is no evidence in the case yet as to what the earlier condition was.

Q What was the condition of the company on September 1st when you assumed the directorship? A That calls for rather a broad statement.

Q Did it have liquid cash? A It had liquid cash.

Mr. Ruback: I object to it on the ground that it calls for a conclusion.

The Court: Objection sustained.

Q Do you recall on September 1st when you became a director the settlement that was made in the suit of Fannie Meyer against the New Jersey Bankers Securities?

Mr. Ruback: I object. I think it is immaterial whether he recalls it or not, or what the terms of that settlement were. That is not within the scope of this re-opening, and then, it is already part of the case.

The Court: Part of our decree. I am limiting you to what I have already indicated.

Q Now Mr. Morrissy, did you attend most of the meetings of the board of directors? A During my pendency, yes, sir.

Q Did the board of directors during that period while you were with them trade in many securities? A Yes, sir.

Q Who was in charge?

The Court: You had your chance. All that was before you yesterday and you rested. I am not going to open it for that purpose.

Mr. Glauberman: I want to show this company was not conducted in any way that was to the disadvantage of the public and the stockholders. I thought your Honor said you would permit me to do that.

The Court: To the extent of the future. To the extent of the then future, and you have gone beyond that. You asked leave to show that you had a newly elected board and that that board was qualified and that it could function favorably. That is as far as I opened the case.

Q Mr. Morrissy, could you tell us whether the board of directors from September 6, 1928, to July 25, 1929, were in any way dominated by any personality outside of the board of directors?

Mr. Ruback: I object. That is not pertinent to this inquiry.

The Court: Objection sustained. We have got something much more important than to transgress upon my ruling.

Mr. Glauberman: May I now ask the Court to give me permission to open the case to go into that?

The Court: No.

Q What is your business? A I am assistant secretary of the Norwich Union Indemnity Company.

Q Are you familiar with any investment company? A Yes, sir.

The Court: Is he a present director?

Mr. Glauberman: He is not. He is past director of this company.

The Court: Located where?

The Witness: 75 Maiden Lane, New York City.

The Court: Do you live in Jersey?

The Witness: No; I live in New York.

Q Were you one of those men that were—that came in September 1st after Mr. Stamler resigned? A Yes, sir.

Q At the time you came into the company was it your opinion from your experience that the company could function properly?

Mr. Ruback: I object.

The Court: Objection sustained.

Q Now, Mr. Morrissy, in July 25, 1929, considering the condition of the company at that time, was it your opinion that this company could function?

Mr. Ruback: I object.

The Court: Objection sustained. The question is leading.

Q Now, Mr. Morrissy, are you familiar with the present condition of the New Jersey Bankers Securities Company? A Well, I have tried to follow it.

Q Do you know that the receivers sold the Hobart Trust Company? A I do.

Q And the Perth Amboy? A I do.

Q And the Lebanon? A Yes, sir.

Q Do you know that most of those assets were reduced to cash? A I have learned so, yes, sir.

Q Are you familiar with the fact that the liability of this company is only about sixty odd thousand dollars? A Well, I am pretty sure they couldn't be very much over that, because they haven't been operating since I left.

Q Now, in your opinion, Mr. Morrissy, as a former director of this company, do you think —is this company in a better or worse condition than it was September 1, 1928?

Mr. Ruback: I object.

The Court: Objection sustained.

You, as a lawyer, know those questions are not proper. Now do not try to repeat them. If you have anything of substance, put it in. I assumed when you asked this man of the condition, you were also going to qualify him as a banker and sustain it, but you are not doing that.

Cross examination by Mr. Weinberger.

Q In line with what the Court suggests, you have had extensive dealings in financing, have you not? A I have.

Q And in investments? A I have.

Q Will you tell the Court what your experience has been, first with your relations with the Norwich Insurance Company—by the way, that is a British type of insurance company, is it not? A Owned by British interests.

Q What experience have you had with finance, yourself, and investments and purchasing of securities and so forth? A Well, I at one time was the principal stockholder in a finance company of small proportions. I spent several years in investment banking houses.

Q Which ones? A Three years with Dillon & Reed—I mean, Eastman Dillon.

Q What was the nature of the work that you did with Eastman Dillon Company? A I was what was known as the investment salesman.

Q What? A Investment salesman.

Q Did that bring you into contact with securities of the diversified type? A It did.

Q Were you familiar with corporations dealing in various securities? A I was.

Q When you first assumed your duties with the New Jersey Bankers Securities were you interested in the purchase of stock—of securities of that company? A At that time, no.

Q I am speaking about the New Jersey Bankers Securities, whether you were part of the board that secured the purchasing. A No. At the time I joined the board—

Q No; after you joined? A Oh, after. That was the main purpose of being a member of the board.

Q Did you have occasion to discuss and consider various purchases made by the company? A I did.

Q The Hobart Trust Company was sold, as you know, for fourteen dollars a share? A Yes, sir.

Q As a member of the board you opposed that sale, did you not?

The Court: Qualifications. Do not open that again.

Q As a matter of fact the company was in a frozen condition, was it not, to the extent of possibly four millions of its dollars? A It was.

Q And evidenced by what institution—what bank? A Evidenced by the holdings in the Hobart Trust Company, the Lebanon National Bank and the Perth Amboy.

Q On that sale—I will ask you first whether there was really any active operation of that company during your regime as director.

The Court: Which company.

Mr. Weinberger: The New Jersey Bankers Securities.

The Witness: Any active operation?

Q Yes. A There was an attempt at active operation.

Q And that was limited to the small cash position of the company, was it not? A I presume so.

Q On all investments made by the board there was a profit realized?

The Court: Objection sustained.

Q Now I ask you this question, Mr. Morrissy —(interrupted).

The Court: Do not transgress. If you can qualify this man so that his opinion will be worth something to me, do it. If you cannot qualify him, I do not want to hear it.

Q Mr. Morrissy, if you will, in your own way, just tell us what experience you have had with regard to the investment of money, your insurance company and other companies you were with—I will appreciate it, without asking the specific question. A Well, in 1920 or 1921, when I went into the investment banking business, I found it necessary to analyze the various statements of manufacturing and financial institutions. I found it necessary to compare for the purpose of—I found it necessary to make comparisons, and I had clients ranging from New York City banks to small individuals who came to me to make satisfactory purchases and their investments. Through that—(interrupted).

Q And to what extent did you make those investments?

The Court: Let him tell me.

The Witness: Later on I became somewhat of an investor—large investor on my own account, and for others. And when I became associated with the insurance company which I now represent—we have about five million dollars a year to invest—I have charge of it.

The Court: It is up to you to make the investments?

The Witness: To recommend. I am one of the executive staff who recommend.

Q Now, Mr. Morrissy, confining myself to the New Jersey Bankers Securities, a fund of two million dollars in cash available at this time for investment purposes, what have you to say with regard to the probability of a substantial return on that money if properly invested? A

Well, a fund of two million dollars—I hadn't had that question to think about, but if properly invested today and properly operated as an investment trust would be operated, it should produce a net, conservatively, of, I should say, fifteen to twenty per cent.

The Court: Annually?

The Witness: Well, as investment trusts are operated today—(interrupted).

The Court: Annually?

The Witness: Annually. You have got a turn over there. It isn't like you are investing for a school fund or a city where you put your funds away for fifty or a hundred years on a four or five per cent. yield. The object of an investment trust is that you have got a certain volume that you can turn over.

Q Mr. Morrissy, can you state whether or not investment today is a matter of almost mathematical certainty if placed in proper hands for investment? A Well, I wouldn't say that. Conditions alter cases. We have been living in a great investment era the last four or five years. If it continues during the next four or five years on the same basis your mathematical process will work out. It is almost impossible to say that you can mathematically work out the return on your investment over a period of five and ten years, but you can say, assuming the same conditions during the next five years that existed in the first five years, you can do so and so, with variations, of course.

Q Will you state to the Court what the value of a fund of two million dollars today is in the

market in the attempt to raise it for capital purposes and the amount of cost incurred in doing it? A Could I say what was the value of it?

Q Yes, two million dollars today, the cost of getting that money? A I am not quite—that is a little beyond me today, because I am —my interests today are more investing than trying to find what it would cost to raise the money, but I can imagine that it would be considerable.

Q What do you mean by the word "considerable"? A Well, it all depends on what you are raising it on. If you are raising—if you are trying to raise fifty million dollars on New York City bonds, Mr. Morgan will do it for possibly about three points. On the other hand if you want to raise two million dollars to start a manufacturing plant in the City of Newark it will cost twenty-five per cent.

Q You have read the purposes of the charter of the New Jersey Bankers Securities, have you not? And you are familiar with its terms? A I believe so.

Q Absolutely? A Generally.

Q Will you state to the Court whether in your opinion the company incorporated for the purposes designated in the certificate of incorporation, namely the purchase and acquisition of bank stock, investment in securities. Can you state whether a corporation of that character has any future? A I can give you my opinion.

Q That is what I am asking you. A The purpose for which the—the basis on which—

The Court: He means a hopeful future.

The Witness: Yes, sir.

The Court: You understand that?

The Witness: Yes, sir; I understand that. My answer to that would be that the basis on which the New Jersey Bankers Securities was organized, to purchase controlling interests in small banks may have been a profitable venture at that time, but as it developed and as we all know in the last few years that was not a profitable venture, but with the money in hand, the cash—it is another proposition. It is better to go out and buy smaller interests than to buy control. To buy stocks, not necessarily of banks, might be banks, insurance companies or industrials, or what not. Proper investments. To buy them at the right time and hold them until the proper time then to liquidate them.

The Court: Suppose you bought at the wrong time.

The Witness: If you bought at the wrong time you got to buy in smaller quantities so as to hold them, because we assume you are buying the right securities.

The Court: All depends on the men operating and running it?

The Witness: A lot on management of them.

The Court: I say, management, and luck.

The Witness: Good management and a little luck.

The Court: You got to have both.

The Witness: Yes, sir; to make money all the time.

The Court: To make fifteen per cent.

The Witness: But with 90 per cent. management and 10 per cent. luck you can just about make money all the time.

Q What do you mean by "management," Mr. Morrissy.

The Court: You mean, what does he comprehend—what is comprehended within your word "management"?

Mr. Weinberger: Yes.

Q What is comprehended by the term "management" as you use it—90 per cent. management and 10 per cent. luck? A Management—might say good management is necessary in a case of this kind. A head with ability; knowledge and affective enough and forceful enough to get about him the proper department heads to run his business profitably and safely.

Q Since the crash we have experienced recently what have you to say as to the available brains or good management within the comprehension of the term used by you? A I can only speak in my own field. There is available managerial ability.

Cross examination by Mr. Ruback.

Q Mr. Morrissy, are there any companies and concerns dealing in any safe, sound securities that are able to return to the investors 15 or 20 per cent. per annum on the amount of the investment? A I can take you to—(interrupted).

Q Are there, yes or no. A Yes, sir.

Q Are there any financial concerns in this country whose stock is sold in the market which

stock yields on the basis of investment at par 15 or 20 per cent. a year? A Are there any stocks in the market of that character?

Q Of any safe and sound investment character? A That yield 15 per cent?

Q That yield 15 or 20 per cent. on the basis of their cost in the market. A On the basis of their present cost?

Q Yes. A Over a period of what time? You are talking about yield. Yield per year or yield for a period of ten years or yield for a month?

Q For a year. A Well, now, I don't want you to get me to answer you the wrong question. We are talking about a fund of two million dollars. I know personally individuals who conduct a fund of two million dollars or less who have in the past year been able to yield more than 15 per cent.—15 per cent. or thereabouts. Now, do not misunderstand me. I do not say that it is possible to make 15 per cent. at all times on that fund.

Q I understood your opinion to be that this fund of approximately two million dollars owned by the New Jersey Bankers Securities could be made productive to the extent of yielding 15 or 20 per cent. per annum. I asked you in what investment—pardon me—in what securities would you invest this two million dollars to produce that yield? A Mr. Stamler could answer you as I will answer you. You ask the question—that's the reason I make this reply—it would take any banker hours to sit down, and days, and possibly months, to invest that two million dollars. To ask me to answer a question like that in a minute—ask me a question you know cannot be properly answered.

The Court: I do not know that counsel knows that. I think counsel is trying to get you to enlighten me.

The Witness: Well, it would take months, —it would take a long time to sit down and tell you. I have seen the time in the last six months when I could have done it in a week, because we have had the opportunities. Today you or I or I don't think any banker knows whether he could buy any particular stocks today—this minute—and make money at all. We are at a period when we do not know whether it is up or down.

Q Are you able to mention any securities that are purchasable today which would yield to the purchaser 15 per cent. per annum on the basis of the purchase price? A No, but we are not talking about that.

Q Do you know of any such securities? A Yes, sir; there are some.

Q Will you name them? A I would have to go over the list, but I could find them.

Q Name one? A Yielding 15 per cent?

Q Yielding 15 to 20 per cent. per annum on the basis of cost. A Now—(interrupted).

The Court: There must be one outstanding.

The Witness: There might be, but it is a stock that is going to pay a dividend tomorrow. There may be, but it is one that is going to pay a dividend. If you will permit me to answer this in my own way I think I can give you my opinion and my statement. There isn't a direct compari-

son there. I was first asked what could be done with the fund of two million dollars.

The Court: Do not let that check you. Give me something that will do me good.

The Witness: What can be done with a fund of two million dollars for a period of a year. Today, possibly I could not go out and buy any securities that would yield over 8 per cent. I know I can—I say, possibly I couldn't.

The Court: A reliable security?

The Witness: I say you couldn't buy a security that would yield 8 per cent., but you might take a fund and invest it.

The Court: Fund or the power?

Witness: No, a fund. I am not talking about the yield—I am talking about the appreciation as well as yield. Appreciation is the point in your investment of your two million dollar fund. You cannot get 15 per cent. on a line of securities. Do not misunderstand me.

The Court: But the increase in the value would equal that.

The Witness: Increase in the value.

The Court: You are not gauging it on what is paid out to the holder of the company.

The Witness: No, appreciation.

The Court: But the appreciation.

Q That appreciation that you speak of is a fluctuating thing, depending on the state of the market, isn't it? A Absolutely.

Q When people are very eager to buy, you will have that appreciation resulting from the increased market price. A Correct.

Q That is what you mean by "appreciation"? A Correct.

Q And in other times, such as recently experienced, you will have depreciation? A If you still happen to be in securities, yes, sir.

Q If you still possess those securities that you are mindful of? A If they are legal investment securities you will buy the securities to hold forever. You buy them for the trends in certain industries. Two years ago the motor stocks for six months were stocks that could be bought, then after a period it was the utility stocks, and after a period it was the investment stocks—I mean the amusement stocks.

Q Are those the types of stocks that you have in mind as a proper investment for this fund? A For this or any fund a certain small proportion of your capital can be put in what you might call a semi-speculative security such as the very highest common stock of the various leading industries in this country.

Q And so much of your capital as you thusly invested coupled with luck and a rising market, might yield you 15 to 20 per cent. a year, is that right? A With luck and judgment.

Q Now, what percentage of that two million dollars would you regard as a conservative fraction to invest in that kind of security—how much? A Well, you say that kind of security.

Q Semi-speculative, as you call it. A You know any answer that I would give you would not be explanatory because there is a thousand listed stocks on the New York Stock Exchange and there is a thousand more over the counter

and there is probably another thousand issues of bonds and in order to pick out and segregate the bonds and the preferred stocks and the common stocks and how much of each you would pick out is a study. It isn't a question that could be answered so haphazardly.

Q Mr. Morrissy, you suggested that a small proportion of this fund might be invested in semi—what you called semi-speculative investments? A I said that.

Q And you defined generally the type. I ask you what proportion of this two million dollars did you have in mind when you made that recommendation? A It would all depend on how the rest of your fund is invested. You start at the top. If I thought I was called upon here—I didn't know I was called upon to act as an expert today and I did not come prepared to discuss finances.

Q What is the most that you would expose to that semi-speculative hazard? A Semi-speculative, I would say that around 10 per cent.

Q What would you do with the other 90 per cent. of that two million dollars? A We would invest it in preferred stocks and common stocks of the higher type and bonds and—(interrupted).

Q What is your experience as to the usual —(interrupted).

The Court: "Bonds and—"

The Witness: Bonds—principally bonds. Various types of bonds, I was going to say.

Q What has been your observation and experience as to the yield of the higher type of common stock, how much? A Today?

Q Yes. A About five per cent.

Q Can you mention one or two of the outstanding? A Yes, sir; Steel preferred—you say common?

Q Common. A No, not common. Preferred pays more than common today. I would have to think about that a little bit, but about five per cent. I could name them if I had the list before me.

Q Isn't it a fact that bonds today because of today's market yield a greater return than common or preferred stock? A You are talking about yield, but with investment trusts there are two factors, yield and appreciation.

Q There is no appreciation in bonds, is there? A Oh, yes.

Q Of the higher type of preferred stock? A With the movement of the money market. As the money market moves one way or the other the bonds move.

Q Not a sustained appreciation? A Yes, sir; three or four years ago we had a wonderfully sustained rise in bonds.

Q Then it depreciated again? A We know that it is coming into that period again. Bonds are real low today, you know, compared with other years.

Q Prior to the past November we have gone through abnormal financial conditions, haven't we? A Yes, sir.

Q Rather an insane condition? A Yes, sir. I will make this statement. My own company—we have five million dollars invested, mostly bonds, because we are not an investment trust. We try to make money operating our company and people won't believe it that an insurance company cannot make money today operating,

and so they make it off of investments; because we were conservative last year we lost $186,000 in the value of our bonds.

The Court: Because you didn't sell them at the proper time?

The Witness: No. There hasn't been any chance to sell them. There hasn't been a chance to sell bonds in the last two or three years.

The Court: Everything has gone to speculation.

The Witness: Everything is going to stocks. There will come a time when bonds —and that is what I say of the investment trust—you got to be prepared. You got to follow the cycle. There is a time to go into bonds as money goes up again as people are out of stocks—I don't want to discuss the money situation, but I think the reason for bringing down the price of stock now is because we are going to get a lot of foreign bonds and the bankers want to make a bond market—they want to get people interested in bonds.

The Court: The real reason for the depressed market is that the lambs have been shaken out.

The Witness: They haven't been shaken out enough yet.

The Court: Still more shaking out?

The Witness: Yes, sir; more coming.

The Court: Really the best security a man can have for his money is in a good bank at four per cent. to be safe.

The Witness: If you have got enough money.

Q As a general experience in the investment world, the yield on investments is lower as the securities—as the safety of the investments rises higher, is that so? A Generally so.

Q What do you think 90 per cent. of this two million dollars, amounting roughly to $1,800,000, invested in a high type of security, safe and sound and free of any unusual hazard, would produce by way of an annual yield? A In the way of an annual yield? Of course if you are only going to go after yield—(interrupted).

The Court: Yield and appreciation.

The Witness: I still stick to my original statement that properly managed—properly managed, expertly managed—which can be gotten at a minimum of cost—a two million dollars fund—I say this because I believe in the market—I believe we are not always going down hill—can be properly managed as an investment trust to yield from 15 to 20 per cent.

Q And that although 90 per cent. of them is invested in the highest type—(interrupted). A I do not say that.

Q —securities? A I do not say that all degrees of securities—just a moment.

Q Just a moment. Suppose you answer my question.

Mr. Glauberman: I submit this witness should be permitted to finish the answer.

The Court: Go on. He is an intelligent witness.

Q We have disposed of ten per cent. of this fund by your advice? A No we haven't.

Q Just a minute, please. I want to finish my question. We have heretofore spoken of ten per cent. that you advised as an investment in semi-speculative securities. A Do you want an answer? Now—(interrupted)

Q We have discussed that? A Yes; we have discussed it. I would like to qualify my answer, if you think whatever I have given was an answer. I gave you a haphazard answer.

The Court: Mr. Morrissy, do not give the lawyer any haphazard answer. That doesn't help me.

The Witness: I mean I gave an answer—just tell me what you are trying to get at and I will be glad to answer it.

Q I asked you whether the other 90 per cent. of this fund you would invest in high grade safe type of securities; you said yes. A I didn't say that.

The Court: I understood you to say that.

The Witness: Yes, sir; but I want to qualify it.

The Court: Semi-speculative.

The Witness: He wanted to know offhand what would you suggest; I said ten per cent. I want to qualify that. Securities are in various degrees. The highest type security in the world today is the United States Liberty Bond. Why? Because what makes the security secure is the element of risk and the least element of risk that can be found is in the United States Govern-

ment bond, therefore a U. S. Government bond pays four per cent. They figure that four per cent. risk when you buy—assumed four per cent. risk when you buy a government bond. The next form is the highest grade railroad bond which will yield four and a half per cent. Why? Because there is a half per cent. more risk in a railroad bond of the highest type than there is in the U. S. Government bond. Next comes the public utility and so on down the list until you finally end down to the preferred stock which—the same railroad preferred stock, might be five and a half per cent., because the risk is relatively great. Then when you come down to the common stock they grade all the way down to the lowest kind of common stock which will pay ten per cent. When I told you that I would offhand, because you asked me offhand—you wanted a quick answer—when I tell you it takes months time to inform one about the matter and you say how much would you put in semi-speculative stock, I say to you it would take an examination of the condition, the present condition. If you had the two million dollars you may not want to touch it for two months. Then you might decide—I might offhand decide ten per cent. on semi-speculative or ten per cent on speculative stock. You start all over. It is a study. It is something that—do not let me quote myself as giving you an offhand statement that you would get ten or twelve or fifteen in any degree of those various stocks, because it is impossible.

Q Mr. Morrissy you reiterated your assertion that this fund in its entirety of two million dollars could be so invested safely as to produce a yield of between 15 and 20 per cent. per year. I want you to indicate—(interrupted). A Pardon me.

Q Pardon me. Wait a minute. I want you to indicate in a general and large way how you would do that. A I would like to answer that question by telling you there is one word you mentioned that I did not say. I did not say, or if I did, I wish to correct it that that fund, that that fund could—I won't say couldn't—but I don't want to infer that that fund will. I will put the word "will," will be invested safely. I say it can, but the reason for investment trusts turning over their capital in order to make more than the usual return from investments of five or six per cent. is because there is an element of risk. If it wasn't for the element of risk you wouldn't sell any common stock. That is the reason why people want stock in investment trusts, they recognize it as a risk, so do not ask me to answer that question when you say "will," I say it can be safely done; I say it can be done, but I wouldn't say that it will be.

The Court: You say people want investment trusts for what?

The Witness: For the speculative feature. When people buy common stock they buy it—(interrupted).

The Court: You say they want stocks in investment trusts.

The Witness: I say that because—(interrupted).

The Court: Why?

New Jersey State Library

The Witness: Investment trusts in the last two or three years have been the big field for investments and the public have wanted to get into this investment trust participation because they hear about how they are making money. As a matter of fact it—(interrupted).

The Court: That is the flag?

The Witness: That is the flag.

The Court: Making money.

The Witness: I want to say it is the turn over that permits them to make the money. They got two million dollars invested.

Q Do you know of any investment—do you know of any investment trust that has been successful through operation other than the sale of its own stock? A Yes, sir; American Foundry and United Foundry.

Q That is the outstanding example of investment trust activity in this country, is it? A Yes, sir.

The Court: What is it?

The Witness: American Founderies.

The Court: How much does it cost to get into that?

The Witness: American Foundry stock if you had bought—(interrupted).

The Court: No. Now.

The Witness: Well, today, of course, it has been divided up. If you had bought a thousand shares in American Foundry ten years ago, you would have about fifty thousand today, because they turned it over and over. Today it is the most conservatively and safely managed institution in America.

Q Isn't it a fact that the American Foundry, your outstanding example of success in that field, made its money in the main through the sale of its own securities, discounting prices? A I wouldn't say that, no, but it has made money by selling its own securities. You mean selling securities that—(interrupted).

Q Selling its own stock, new and additional issues. A I don't see how they could make any money doing that. They got their original surplus from appreciation.

The Court: Any other?

The Witness: Yes, sir; United Foundry; United and American, two different companies. There is any number doing it, Electric Bonds and Shares is an investment trust. It is a definite trust, that. It was mostly—it is a fixed trust, you know, that deals in securities of public utilities. And you take today the United Corporation just organized two years ago by Morgan is an investment trust, a holding company but really operates as an investment trust, you know.

Q That is a fixed trust, isn't it? A It is in a sense. They call it a holding company. They differentiate it there a little bit.

The Court: They are not going to let the public in on the ground floor.

The Witness: No, not so much, no.

Q Now, just one more question. Allowing the reasonable business risk in making of investments how would you invest the two million dol-

lars so as to produce a minimum of 15 per cent. per annum? You have quarrelled before with the word "safety." I ask you now to state generally the character of investments reserving reasonable business risks— A Now, assuming that I am the manager of that trust, which I do not say and probably would not take it under any circumstances because I have almost lost my wife and family because of my association that brings me to New Jersey so many times, but if I was the manager of the trust today I wouldn't make a decision myself for days and weeks and possibly months, so how can I answer your question? It is a matter—it is a technical situation that requires not only examination, but I would have to consult my bank friends and my public utility friends and this thing would have to be gone into so carefully and so mathematically that I could prepare an answer for you in time.

The Court: Do you think an assistant secretary to an oil company would have the qualifications to analyze the situation indicated?

The Witness: Not knowing his other qualifications I wouldn't know.

The Court: Generally he stands well with his company, does his own work well for the company. It is really a science, isn't it?

The Witness: It is a science, yes, sir.

The Court: How much would it cost to have a man like you?

The Witness: It would cost fifty thousand dollars a year.

The Court: You would lose your wife altogether then if you came to New Jersey.

The Witness: We would move to New Jersey. We live up here in the summer time anyway.

Q I suppose such an executive could not very well do his work without able assistance. A He would need assistance.

Q How many assistants experienced in that field would he require? A That is a matter of thought.

Q He would want several? A He would want some. I wouldn't know how many.

Q What would you have to pay to an experienced executive? A You wouldn't need much—the main help you would need would be looking after the stockholders, that is the main thing—I mean the corporate matters. The reason most of these investment trusts operate and you hardly know of them is because they organize—a few individuals will throw in together. I know a man downtown who has the backing—man that represents four or five individuals and he operates a trust of two million dollars, and he hasn't got a lot of corporate matters to look after, he don't have to be sending out notices of directors' meetings and stockholders' meetings and sending out statements and so on, that costs money, you know, all that organization.

Q It would cost another $50,000 for organization under you, if you were in charge? A No, it wouldn't cost twenty-five.

The Court: Twenty-five?

Witness: Twenty-five at the most.

By the Court.

Q I am afraid Mr. Ruback's fifteen per cent. has somewhat retarded you from giving full ex-

pression. In what sort of securities do you say the fund of this kind ought to be invested? You see, I have omitted the fifteen per cent. A It should be invested—I believe thoroughly in investing your funds, the major portion of your funds in the leading industries of your country. You not only find there a better market, a safer investment, but generally almost as much appreciation as you find in the lesser stocks of the lesser calibre, so I would say it would consist of investment in such companies—I wouldn't indicate whether it would be upon preferred or common stock, but such companies as the General Electric Company, the principal utilities in the country, of which there are many; the principal manufacturers in the country, including United States Steel and Bethlehem Steel and the copper company, Anaconda Copper and principal amusement fields which are becoming today stable investments, stock like Warner Brothers Pictures, which people may not think is substantial but pays four dollars today and sells for sixty dollars and they have a total investment of something like three hundred million dollars; institutions like Paramount Films—principal industries in the country.

Q What do any of these companies at the present day prices pay or return—yield? A Yield?

Q Yield. Three or four per cent.? A No, better than that. Only the very leading common stocks today—take United States Steel, of course, today, seven per cent. stock, selling at a hundred seventy; that is a yield of a little less than five per cent. On the other hand some of the railroad stocks are yielding nearly six per cent., some of them.

George E. Morrissy, further cross.

Q But on the other hand, five, the higher grade ones. A Like Baltimore & Ohio, where Southern Railway and all those stocks that aren't so good just this minute, pay seven per cent., but sells around a hundred and ten. So, as I say—that is one that seems to be on the down grade instead of up. You go in those that are on the ground and on the up.

Q How do you know unless you are on the inside? A You got to follow the trend, you got to follow the statements, you got to be familiar with the industries. You find the cycle of business in this country. There are always trends, not always of the same industries. Everyone knows how in the last ten years the automobile business came to the front. Anybody who invested in sound automobile—the leading automobiles, any time between the last ten years and last year was bound to find a big appreciation and return.

Q Some lost big losses. They only became leading because they absorbed the others, isn't that so? A That is so, yes, sir.

Q But you take them. A That is right, about that.

Further cross by Mr. Ruback.

Q Mr. Morrissy, these opportunities of getting a yield on this fund, I suppose are equally available to each stockholder of the company if the fund should be distributed and a portion given the stockholders. A No.

Q Why not? A If you ask the question in that way I would answer it in this way, really—If you want facts—

The Court: They haven't the volume.

The Witness: They haven't the volume in my mind to do it, really. Give stockholders who paid sixteen dollars a share fifty cents or a dollar—I don't know what he is actually getting—it seems a shame when you got two million dollars which could be held together for the purpose of operating as a total fund —it is only the total fund. I may go out in the market today with $1,000. I am ruined. Your stockholder with a thousand dollars today can't do anything, because he can't afford to buy for appreciation because he has got so little, he cannot risk anything.

Q Buys ten shares and puts them in his coffers, he is not risking anything. A But he can't turn it over.

Q You mean to put it on margin? A If he buys it outright he can't turn it over. He wouldn't want to sell it every three months or every four months or every six months. With a big fund you are not selling it all. You are not turning it all over. Assume you turn it half over, purchase $100,000 of securities in a year and make ten turnovers of the $100,000 with a ten point profit, you have made some money.

Q This fund of two million dollars is not sufficiently large to be used for underwriting purposes, municipal issues; it is too small for that. A Yes, sir.

Q Is that right? A Yes, sir. You would have your money tied up. You might just as well go out, buy part of somebody else's underwriting issue.

Q You think that the risk from an investment of a thousand dollars or five thousand dollars is greater if investing in the same securities—is

greater than when you invest the full fund of two million dollars in the same securities? A In the same securities. There is the point. You would have a better diversification of the two million. A man can't diversify on a thousand dollars. With two millions—(interrupted).

Q Diversified—some might win and some might lose? A You got to begin—you will figure you lose. If it is diversified you figure if you lose ten per cent. you have the other ninety that might show appreciation. I would rather start out on the basis you are going to lose something and then figure how you are going to overcome that.

Cross examination by Mr. Weinberger.

Q It is a fact, isn't it that just before the closing of the Hobart Trust Company you recommended to the board that there should be a special type of man retained to do the very thing you were discussing here this afternoon? A I did.

Q And the fact is, is it not, that an appointment was arranged with the board of directors of the Hobart—with the board of the New Jersey Bankers Securities where one of the gentlemen was introduced by you who did this very character of work, isn't that a fact? A Well, that is true, yes, sir.

Q Isn't it a fact that this gentleman was in charge of funds just of this type and gave the board a talk on how to invest money and what the company should do along the lines you spoke of here this afternoon? A That is true.

Q Would you mind giving the Court the name of this gentleman who was called there to the

board and what his business was? A I wouldn't mind giving it to the Court. I wouldn't want it to be made public.

The Court: It was not the same man who talked here for two or three hours at an earlier hearing about finances?

The Witness: No. As a matter of fact this man—(interrupted).

The Court: Financing I think in portable houses.

Mr. Weinberger: I think that gentleman's name was Chapan. He was not the man.

The Witness: I wouldn't mind giving you the name, but I remember—that man is a very prominent man and after the New Jersey Bankers got all this newspaper publicity —shortly afterwards—I was pretty much chagrined to think that I had brought him in there and I do not want to give him any publicity in this thing.

The Court: What was the matter with the New Jersey Bankers at that time?

The Witness: The newspaper publicity right after that.

Q You do not even want to mention his name now in connection with it. A I wouldn't want to mention his name.

The Court: Let us have it.

The Witness: Charles F. Tuttle.

Q He was one of the trustees, was he not, of R. G. Dun & Company? A That is right.

Q Mr. Tuttle recommended to the board of directors at the time that you were there as a

member of the board that there should be a management such as you speak of here today? A Yes, sir.

Q Employed by the company? A Yes, sir.

Q And he was willing to provide just such management and get the best the money could buy for the purpose of pulling this company out of a hole; is that not correct? A That is correct.

Re-cross examination by Mr. Ruback.

Q When was that that you received Mr. Tuttle's advice, just state the time? A The time the Hobart Trust Company was closed.

Q July of last year? A Yes, sir.

Adjourned until Tuesday, May 27, 1930.

IN CHANCERY OF NEW JERSEY

May 27, 1930.

Between

SOLOMON BERNSTEIN,
Complainant,

and

NEW JERSEY BANKERS SECURITIES COMPANY,
Defendant.

Continuation of hearing pursuant to adjournment before Court and counsel as before.

CATHERINE MATEY, recalled.

The Court: Called as respondent's witness?

Mr. Glauberman: Yes, sir.

Direct examination by Mr. Glauberman.

Q Miss Matey, you testified at this hearing that you were the secretary of the receiver? A Yes, sir.

Q Are you in charge of the office? A Yes, sir.

Q Located at 60 Park Place? A Yes, sir.

Q Do you recall sending out the letter of April 6th? A Yes, sir.

Q Have you got the letter with you? A I think so. No, I do not seem to have it with me, Mr. Glauberman.

Mr. Glauberman: I offer it in evidence.

Mr. Ruback: I object. I do not think this is at all pertinent to the only issue we are trying.

The Court: I don't know what it is.

Mr. Ruback: Whatever it is. A letter sent out April 6th cannot be pertinent to the only thing now being litigated, as to the ability of this company to operate hereafter with a profit. It may be a prediction or prophecy.

The Court: If you concede that this company had a board of directors, I will rule it out. I understand that is one of the issues, an issue preliminary to the question as to whether the company can operate.

Mr. Ruback: I object to it until it is exhibited. I do not know what it is.

The Court: Has anyone a copy of the April 6th letter?

Mr. Glauberman: It was a letter sent out by three stockholders, notice and proxies.

The Witness: That is March 29th, Mr. Glauberman.

The Court: Have you that letter?

The Witness: Yes, sir; I have that one.

The Court: You are changing the date?

Mr. Glauberman: I am changing the date. I offer that in evidence. I offer the letter dated March 26th, addressed to the stockholders of the New Jersey Bankers Securities Company, signed by Strickland, Kramer, Silberstein, and others, also the proxy.

The Court: Let this be marked.

(Letter marked Exhibit D. 1 of this date.)

(Proxy marked Exhibit D. 2 of this date.)

(Notice marked Exhibit D. 3 of this date.)

Q The letter was sent out under your supervision? A Yes, sir.

Q To whom was it sent, Miss Matey? A To all stockholders of record.

Q As of what date? A I believe it was twenty days prior.

Q To what? A To the date of the letter—to the date of the meeting.

Q Date of the meeting, that is March 27th? A 27th.

Q And the receivers paid for the printing of the letter?

The Court: The letter is addressed to each stockholder to his last-known post office address?

The Witness: Yes. sir.

The Court: Postage paid?

The Witness: Yes, sir; by the company.

The Court: I say the postage was on the envelope, on each envelope?

The Witness: Yes, sir.

The Court: What did you do with the envelopes and the contents?

The Witness: They were brought over to the post office and mailed.

The Court: Who took them over?

The Witness: The Barton Letter Service, I believe it is.

The Court: You know they were delivered to the post office?

The Witness: Yes, sir.

Q Besides the notice, proxy and letter, you also enclosed a return stamped envelope? A Yes, sir.

The Court: Addressed to whom?

The Witness: New Jersey Bankers Securities Company, 60 Park Place, Newark, New Jersey.

Mr. Glauberman: I offer that in evidence.

(Paper marked Exhibit D. 4 of this date.)

Q Miss Matey, every proxy had a number? A Yes, sir.

Q To correspond to what? A To correspond to the number on our stockholders' list.

Q And did you prepare a list of all the stockholders? A Yes, sir.

Q Of record, as of March 27th? A Yes, sir.

Q And you gave them a number? A Yes, sir.

Q And then you mailed to each stockholder a proxy bearing the same number that is in your list, that is correct? A Yes, sir.

Q Did you receive many of the proxies—did you receive some of the proxies, returned to you? A They all came back to the office.

Q They all came back to the office? A All that were signed; yes, sir.

Q And you checked them up? A Yes, sir.

Q Where are the proxies now? A I have them over in my office.

Q Those are the proxies which the Master, Mr. Lum, checked up? A Yes, sir.

The Court: And ought to be here.

Q Can you have them here, Miss Matey? A Yes, sir.

Mr. Glauberman: I offer them in evidence.

Mr. Ruback: No objection.

(Proxies to be marked Exhibit D. 4-A of this date.)

Q Miss Matey, I have subpoenaed the transfer books of the company showing how much stock Mr. Weinberger actually held as of March 27, 1930. Can you give us that? A 172,144 shares.

Mr. Glauberman: I offer that in evidence, the transfer book of the company.

(Book marked Exhibit D. 5 of this date.)

The Witness: I did not bring the book.

Q What is the transfer book, a loose leaf? A Yes, sir. It is rather cumbersome. I just brought the one sheet.

Q You bring the sheet marked Mr. Weinberger's account? A Yes, sir.

Q Miss Matey, did you also attend to the advertising of the meeting in any newspaper? A Yes, sir.

Q Which newspaper was the meeting advertised in? A Jersey Journal, Newark Evening News.

Q Have you any affidavits from the publishers, proof of publication? A I did not get an affidavit from the Jersey Journal. They didn't send it down.

The Court: How many does the law require?

Mr. Glauberman: Only one.

The Witness: I have one from the Newark News.

Mr. Glauberman: The law requires that it should be published in the County where the company has its office. The office has not been changed since the receivers were appointed. So, in order to play safe, I had it advertised in Newark as well as Jersey City.

The Court: Have you the Jersey City proof—have you proof of publication?

The Witness: Just the bill from them, and the proof of the item as it appeared in the newspaper.

The Court: Any dispute as to the publication?

Mr. Ruback: No.

The Court: It is admitted that it was properly published in the Jersey Journal and Newark Evening News. Is the notice that it was published in evidence?

Mr. Glauberman: No. I am offering it now. I offer the affidavit of the Newark Evening News.

(Paper marked Exhibit D. 6 of this date.)

Mr. Glauberman: I offer the notice from the Jersey Journal.

(Paper marked Exhibit D. 7 of this date.)

Q Do you know, Miss Matey, who paid for the advertising and the printing?

The Court: What difference does it make?

Mr. Glauberman: It was all under the supervision of the receivers.

The Court: Under the direction of the Court. The Court wanted to be informed.

Q Miss Matey, before it was advertised, you hired a hall—hired a room in the Robert Treat Hotel for the holding of the meeting? A Yes, sir.

Q And you arranged that? A Yes, sir.

Q Were you at the meeting held April 17, 1930? A Yes, sir.

Q Do you know Mr. Markley? A Yes, sir.

Q Did you see him there at the meeting? A I seen him after the meeting had started some time.

Cross examination by Mr. Ruback.

Q You said that all the proxies which had been sent out under your supervision were returned to your office. You did not mean all that were sent? A I said all those that were signed.

Q All those that were sent back by the stockholders reached you? A Yes, sir.

Cross examination by Mr. Weinberger.

Q Miss Matey, can you tell us approximately how many of these letters were returned as not being found—delivered? A There were several hundred of them, Mr. Weinberger. We did not count them.

The Court: Amounting in stock holdings to how much, do you know?

Q The number of stockholders and shares they represented? A No, I couldn't tell the shares they represented. We did not open them.

Q Is there any way to make that calculation? A Yes, sir. We didn't take the time.

The Court: Have you the returns?

The Witness: Yes, sir.

The Court: I wish you would do that. How long will it take you to get them?

The Witness: Several hours, because they will have to be checked back.

The Court: You need not bring them here, but just bring the memorandum.

The Witness: Yes, sir.

STUART ROSS, sworn on behalf of the defendant, testified as follows:

Direct examination by Mr. Glauberman.

Q Mr. Ross, what is your business? A Vice-president and assistant treasurer of a retail store organization.

Q What is the name of it? A Worth, Inc., is the name of it.

Q How long are you connected with Worth, Inc.? A Five years.

Q Before you became connected with Worth, Inc., where were you employed? A Ten years prior to that time I was with Lebrand, Ross Brothers & Montgomery, certified public accountants.

Q Is that a famous accounting firm, having offices possibly in every city in the United States,

and Newark? A I think you are putting it mildly. They are very well known. It is an internationally known firm. It doesn't need advertising.

Q Mr. Ross, when did you first become acquainted with the New Jersey Bankers Securities Company? A September, 1928.

Q And before you became connected with the New Jersey Bankers, did you make a study of its condition at that time? A I reviewed the letters sent out under—sent out by Mr. Stamler prior to the reorganization which was approved in September, 1928.

Q You became a director September 1, 1928? A About that time.

Q To what time did you serve as director? A To July 23, 1929.

Q Do you recall the condition of the company as of July 23, 1929, I mean assets and liabilities? A Yes, sir.

Q Did you follow up the developments of the company under the receivership since July 23, 1929? A Through the reports of the proceedings as stated in the newspapers, and through letter which were sent to stockholders by the receivers.

Q And which you received? A Yes, sir.

Q Do you know the condition of the company now?

The Court: As reported to you?

The Witness: Yes, sir; as reported to me by the receivers.

Q You received a letter dated March 6th, setting forth the assets and liabilities of the company? A I did.

Q Now, Mr. Ross, while you were connected with Lebrand, Ross Brothers & Montgomery, did you have occasion to audit books for investment companies? A Banking houses and stock exchange houses, various kinds of companies in the business world, investment companies in those days were not as popular, in fact, there were very few of them five years ago.

Q Now, since you left Lebrand, Ross Brothers & Montgomery did you keep in touch with the investment market? A Yes, sir.

Q Now, Mr. Ross, I wish you would give us in your own language a comparison of the status of the company as it is today and as it was on September 1, 1928, giving us the advantages and disadvantages as compared with that date, with a view of whether this company could safely resume its business in its own way.

Mr. Ruback: I object.

The Court: Objection sustained. I am going to permit you to develop the subject matter that you have in mind, but you must qualify this witness. He was with a public accountant firm. That means nothing. You may develop what he did there, and you may develop what he has been doing since, to qualify him, and then you may develop that subject matter that you have in mind. I want to know what he did. What type of work did he do, and whether he just went over books.

What type of work did you do with the accounting firm?

The Witness: My experience with that firm included not only audits, but special

examinations for bankers, and assisting in plans for recapitalizing various companies, plans in connection with bond issues. General accounting work of the management type.

The Court: You see, the common impression is that you are a man who deals in figures only. Now, you explain the situation. My impression was of a man who checked up books.

The Witness: I see. There is a great deal of that to be done.

The Court: That is the common impression. If it is any more, you develop it. I always had that notion until six months or a year ago.

The Witness: I will put it this way: Junior accountants do most of the detail to which you refer, then there are some seniors, and the seniors are the managing accountants.

The Court: What did you do and what did you learn?

The Witness: In my latter years I was a managing accountant for that firm, and worked with firms such as Goldman, Sachs & Company, Lehman Brothers and larger Stock Exchange firms, such as the American Telephone & Telegraph Company, various railroads.

The Court: Doing what?

The Witness: Assisting in plans for recapitalizing in certain cases, and making studies of their earnings, prospects, and where economies of operation could be made, and in buying securities.

The Court: The study of security values?

The Witness: Yes, your Honor.

The Court: You are now with Worth & Company; what is their business?

The Witness: We operate a chain of stores selling women's ready-to-wear garments.

The Court: You haven't continued your studies then during that period. During your service with Worth & Company it has not taken you in the same line as you were before?

The Witness: It has not taken me in the same line I was in before; no, your Honor.

The Court: Have you followed it up?

The Witness: Yes, sir.

The Court: In what way?

The Witness: By studies, and because of my primary interest, if I may say, your Honor—investment companies have always been of great interest to me, and my primary objective in the business field is not staying in the retail field, but getting into the banking field.

The Court: You are working in the retail field, but your mind was in the securities field?

The Witness: No; I wouldn't say that, either.

The Court: Your heart was in it?

The Witness: That's a different way and better way of putting it.

Q Will you please tell us in what way you kept up your study and your interest in the

investment market since you left Lebrand, Ross Brothers & Montgomery? A Well, having a few dollars of my own to invest, it was necessary to do that by reason—by studying the different news articles and articles in reputable magazines pertaining to finance and investment companies and things of that kind.

Q While you were employed by Lebrand, Ross Brothers & Montgomery, did you have to be called then as a consultant by bankers, whether they should make such investment in a certain company, or whether such investment should be made? A Certainly.

Q In fact, that was the primary object of those audits, was it not? A Of many of them, not all of them.

Q Could you tell us now the condition of the company as of September 1, 1928, at the time you assumed the directorship?

The Court: We have that.

Mr. Glauberman: I know. I want to compare. I want to go back to—(interrupted).

The Court: Ask him if he knows.

Q Do you know the condition of the company as of September 1, 1928? A Yes, sir.

Q And you know the condition of the company now? A Yes, sir.

Q Will you please compare the two, giving us the advantages and disadvantages, as the company stands today?

Mr. Ruback: I object.

The Court: I do not think he has finished.

Q (Continuing) With the view in mind of whether this company could function properly?

Mr. Ruback: I now object.

The Court: I think you have complicated your question, or you really limit your witness too much.

Mr. Glauberman: My thought is—(interrupted).

The Court: I want the subject matter. You are asking him to base his opinion upon the comparison. Ask him whether from his knowledge that he has already testified to he has formed an opinion as to the feasibility of this company operating, and if so, what, and explain it.

Q Mr. Ross, will you give us in your opinion —(interrupted).

The Court: No. Lay the foundation.

Q Have you made a study of the condition of this company? A As shown in the receivers' report to the stockholders?

The Court: Yes, and your knowledge of the company before.

The Witness: Yes, your Honor.

The Court: As of September, 1928, and before, and have you formed an opinion—have you been able from that data to form an opinion as to the feasibility or non-feasibility of this company operating in the future?

The Witness: Yes, your Honor.

Q Will you please give us that opinion?

Mr. Ruback: I object. That surely calls for an expert opinion. I do not think the witness' qualifications to speak on that subject have been established. All that appears to the present moment is that for some fifteen years he has been an accountant. True, his duties have brought him in contact with bankers, and he has been called upon to audit the statements and accounts of bankers, but that is hardly tantamount to that experience in handling securities, their classification and sales, that would qualify him.

The Court: I think so. I understand, Mr. Ross, that you are a chief accountant?

The Witness: Yes, sir.

The Court: They are advisers?

The Witness: That is it, in many, many cases.

The Court: And you were an adviser?

The Witness: Yes, sir.

The Court: With reference to securities, I think he is qualified. I will take it for what it is worth. He may not up to now have been as well qualified as he might be, and his testimony is only worth to the extent that he is qualified.

Mr. Ruback: Will your Honor permit me to examine him at this point to test out his qualification?

The Court: I will permit you to do it on cross examination.

Q Will you please give us your opinion—give us your views as to the feasibility of this

company functioning in the future? A Well, your Honor, it is true that the bulk of the assets have been converted into cash, which I understand amounts to about a million, seven hundred thousand dollars, and until I was in court two weeks ago, it seemed to be a rather simple problem, but in—(interrupted).

The Court: You see, to make your testimony of any value, you must rest it entirely upon what you have disclosed to me, namely, that you are familiar with the affairs—financial affairs of the company, and that familiarity arises out of your own connection with the company up until 1929, and the information you have since received by a study of the reports issued by the receivers, which are all in evidence. Now, you must confine it to that in order to give it any value. If you go beyond that, then you must inform me upon what other things you base your opinion.

The Witness: What I had in mind was that irrespective of the amount of working capital that the company has, first some means must be found of assuring continuity of management to preserve the company from harassment and things of that kind, possibly by way of a voting trust agreement, whereby the holders of a majority of the stock would trustee their stock to a voting trust committee of two or three people well known, well-known people in the community, men of standing and ability, and after that operate the company along very conservative lines. I might say along the lines of an investment trust as it is

understood—the most conservative meaning of the term.

The Court: I wish you would give me your full views.

The Witness: The company needs, in my opinion, a period of rest and quiet, and I am not here to make predictions that the company can earn any given percentage on the amount of capital that it would have to work with, but I do believe, that, any group of men of integrity and ability, but primarily a matter of integrity and reputation, can take the million, seven hundred thousand dollars of working capital which I understand the company has, and over a period of, not between now and the date of the next annual meeting, but over a period of two or three years, or possibly longer, that fund, if wisely administered, could be made to return very substantial earnings to the stockholders of the company. My own opinion. I cite the record of the Alexander fund, a Philadelphia corporation, which over a period of 22 years averaged over—slightly more than 10% in net earnings after paying all management fees, office expenses, and things of that kind. I mention that fund, your Honor, because the principal of the fund today is somewhat over three millions of dollars, but during the 22-year period which I am referring to, it did not at all times have that amount of money, so that at some time in the period it was about—it had about the amount of funds that the New Jersey Bankers has at this time.

I might also cite the Firth Investment Company.

The Court: Who was the head of that company?

The Witness: The Alexander? An individual by the name of W. W. Alexander.

The Court: Who are his associates?

The Witness: He has several. I cannot name his associates, but I know it is a very well—(interrupted).

The Court: They are prominent men in Philadelphia?

The Witness: I think so, your Honor. He has been very successful, and it is very conservatively administered. The fund is not permitted to invest over 2% of its principal in any one class of securities. There is no margin trade. No fly-by-night adventures, or anything of that kind. It is run on a basis which is more conservative than the management of our banks, I believe. I do not see any reason why the funds of this company, under similar competent management, cannot be made to produce at least that favorable showing.

Citing another company having total funds of about the same amount as the New Jersey Bankers has today, the Firth Investment Company of New Hampshire, over a ten-year period that company's net earnings, after expenses, Federal taxes, and things of that kind, averaged over 11%.

The Court: Tell me who is back of that.

The Witness: I would have to refer—(interrupted).

The Court: The character of the men. Names mean nothing. They are too far away.

The Witness: Yes. I cannot name them to you offhand, your Honor. I have the papers in my private file, and would be glad—(interrupted).

The Court: Very prominent?

The Witness: Yes, sir; very well regarded.

The Court: Very prominent men back of it?

The Witness: Prominent men. And I am trying to quote only the most reputable and successful companies. In considering the New Jersey Bankers' problem, it must be borne in mind that whatever earnings other companies show for the next two years at least, this company will be in a somewhat more favorable position by not having any Federal Income Tax problem. The losses sustained by the company can be carried forward for at least two years, and if the company on its million, seven hundred thousand dollars, for example should earn say 10% net after office expenses, it would really be the equivalent to 12½%; more than that, by reason of the fact of not having to pay any Federal tax, but I firmly believe that this fund or any other fund, other companies, can be administered wisely, but I do not for a moment think that it is as easy as just making that statement. I know from my own experience that it was impossible to interest local men in the company before the receivership—men of standing in the community.

The Court: Why?

The Witness: My own experience was that there were too many past entanglements, and the reputation was unfortunately, not favorable, and they just wouldn't risk tying up with us.

The Court: Anything more? It is very interesting.

The Witness: Well, your Honor, I could quote companies and earnings, and things like that. It is just reputation. I am more concerned than anything in insuring practicability of management to whatever group of men this company is entrusted to, because no group of men can make a favorable earning showing between now and the date of the next annual meeting, and in the absence of what might be termed a spectacular earning, as to accomplishment I think the history of this company has been that any group of men would be open to harassment by the people, possibly with selfish motives. That is why I emphasize if we can assure whatever group of men the company may be entrusted to, that they would be in office not alone from May to September, but for a long enough period so that they would have an opportunity to show what they could do. I think that is important.

The Court: Proceed.

Q Now, Mr. Ross, will you please tell us what advantages this company has now compared with that of September 1, 1928. That is obvious. Today it has cash. Then it had assets carried at fancy values on the books, but the substance was not there. That is not a de-

batable point. I am not asking you a debatable question. Just tell us what is to you obvious—what elements are there today which were not present September 1st? A Cash. Cash. The most desirable—(interrupted).

Q In your opinion, is this company in a better position today to function than it was September 1, 1928? A It has something to function with now. It did not have then.

Cross examination by Mr. Ruback.

Q Worth & Company is a merchandising house in New York?

The Court: That is what he said.

The Witness: Yes, sir.

Q And while you were with them did you deal with securities? A To some extent, yes, sir.

Q Did you have any securities office? Did you maintain a securities office? A Mr. Ruback, I think you asked me—(interrupted.)

The Court: If among the operations of the company was the buying of securities.

The Witness: No. We have no reason to maintain a separate office.

The Court: Your answer is no.

Q And except for those securities that you for yourself bought and sold during those five years, you had no actual experience in the market—securities market? A I did.

Q In what respect? A New Jersey Bankers Securities.

The Court: Then you followed the general trend?

The Witness: Yes, sir.

The Court: Did you follow the general field?

The Witness: Yes; sir; very thoroughly, very carefully.

Q Your period of activity with the New Jersey Bankers lasted less than a year, did it not? A That is true.

Q Eliminating that period, may I ask you whether you had any experience in the securities market other than that which came from your buying and selling your own shares of stock? A In connection with the re-financing of our own company, I had considerable experience.

Q Worth & Company did not deal in securities? A I said in connection with the re-financing of the company.

The Court: Answer the question.

The Witness: No.

Q During the period that you served as a director of the New Jersey Bankers Securities Company from September 1, 1928, until the appointment of the receivers, were you quite active in that office? A Yes, sir.

Q Attending all meetings? A Most of them.

Q Were you on any committees that were charged with the business of buying and selling securities of the company? A I was.

Q And did you serve on that committee actively? A I did.

Q Any of the securities of the New Jersey Bankers bought during that period bought without your approval? A Many of them.

Q Any bought over your objection? A Yes, sir.

Q Expressed at meetings? A Yes, sir; and in writing.

Q Delivered to whom, the president? A The managing director, Mr. Jelin.

Q Any objection made by you to the president, Mr. Edwards? A He was not president at that time.

Q I am speaking of the period from 1928 to July, 1929. A Oh. He was not president at the time I made—(interrupted).

The Witness: He was not present or president. He was not present. He was in Washington the greater part of the time.

Q Did you ever complain to Mr. Senator Edwards concerning the investments that were then being made for this company during the time you were a director? A It was discussed with him, yes, sir.

Q Did you ever object to them? A Yes, sir.

Q What securities—what purchases did you object to? A If you refer to my letter to Mr. Jelin dated—(interrupted).

The Court: Can you give us what you objected to?

The Witness: I objected to several things, your Honor. I want to be specific.

The Court: Do you remember now?

The Witness: I think one of them was the Allied Investment Corporation.

The Court: Speculative?

The Witness: Newly formed company, your Honor, suggested by some broker or

somebody, and I felt that it was not the type of security that the funds of that company should be placed in, and I wrote to Mr. Jelin about it.

Q Did you at any directors' meeting express your views or objections to the purchases that were being made? A At meetings of the executive committee, which passed on those things, I voiced my objection, and the result was that the policy was changed, and later at a directors' meeting, because the policy of the executive committee had not been followed, the board went on record restricting the investment of the company's funds to New York City bank stock. That is a matter of record.

Q Who were your co-directors on the executive committee? A Mr. Evans, Mr. Roegner, Mr. Jelin and myself.

Q Mr. Roegner and Evans sat with you when you expressed objection? A I think that is a matter of record.

Q What is your recollection, Mr. Ross? A They did.

Q Notwithstanding that, securities were bought of the kind you objected to, is that right? A Temporarily.

Q What bankers were there that called you in during your experience as an accountant to advise them as to the type of securities to be purchased? Name the bankers that consulted you, took your advice? A That took my advice?

Q Yes. A Why, I was frequently in consultation with Goldman, Sachs & Co., Salomon Brothers & Hutzler, also Lieber & Company.

Q Who of Goldman, Sachs & Company took your advice as to the purchase of securities? A Took my advice? They engaged my firm, not myself.

Q Did you personally act with respect to the giving of advice? A I personally prepared the reports for our firm, which were transferred to the various banking houses, and often sat in consultation with them.

Q Did you personally consult with any member of Goldman, Sachs & Compony, and give him advice? A Yes, sir.

Q What is the name of the member of that firm with whom you conferred?

The Court: I do not think I will go into this. The gentleman comes here and evidently knows something about these things, and tries to give me his views.

Q Now, Mr. Ross, you think this fund conservatively and wisely invested, could be made to yield a substantial return. What have you in mind when you speak of "substantial return?" Express it, if you can, in percentages? A I think I did when I explained to his Honor—rather than give my own opinion, I tried to cite facts based upon a long enough period of time so that they would not be subject—(interrupted).

The Court: You do not understand the question. What kind of securities?

Mr. Ruback: I asked him what he meant by substantial return. You mean ten or eleven per cent.?

The Court: Then you confused it by percentages, which I omitted.

Q You mean ten or eleven per cent., such as you say was the yield of the Alexander fund, and Investment Trust of New Hampshire? A I think those are fair rates of return. I think in many cases they can be exceeded.

Q Do you know what kind of business the Alexander fund of Pennsylvania has been doing? A Yes, sir.

Q What? A It is an investment fund operated on the principle of an older, conservative investment company, and its record over a period of 22 years bears that out.

Q In what securities have they been making their investments? A Only New York Stock Exchange securities, and not more than two per cent. of the fund goes into any one security.

The Court: On margin?

The Witness: No.

Q And do you say the same about the Firth Investment Company of New Hampshire, they too deal in Stock Exchange securities? A Yes, sir.

Q On stocks? A It's a well managed company. The Firth Investment Company, or any well managed company, will deal at times in bonds, preferred stock, common stock. I wouldn't sit here and tell you they dealt only in common stock.

Q Is that what they deal in mainly? A I wouldn't tell you that. I refer to their earnings record, and their general policy of operation.

Q Well, are you intimately acquainted with the policy of these two companies and their experience? A Intimately enough—(interrupted).

Q Do you know enough about their business to be able to say that they have dealt mainly in one kind of security or another? A I am not concerned with it.

The Court: Oh, no.

Q You will be. A I am citing—I am attempting to cite companies of good repute and satisfactory earnings record. I will be very glad to let you or any of your associates see the papers that I have in my possession, and would be very glad to go into it more thoroughly with you.

Q Suppose you just answer this question: Do these two companies deal mainly in common stocks dealt in on the New York Stock Exchange? A I wouldn't answer that definitely without referring to my records.

Q You do not know? A My answer stands.

Q You do not know?

The Court: He cannot inform you.

Q Is it your opinion, Mr. Ross, that with Mr. Harry Weinberger's block of 172,000 shares continuing as an outstanding portion of stock in this company, and assuming that it has voting power, that you could get a group of high class experienced business men to undertake the conduct of this company? A I understood that that had been done.

Q Is it your opinion that that can be effectively done? A I understand the board of directors has been elected.

The Court: Won't you answer?

The Witness: I do not quite—I am not quite clear, your Honor, as to—(interrupted).

The Court: What he asked you was whether you thought with the Weinberger stock out as a voting factor, you could gather together a group of substantial men to operate this company successfully.

His answer already appears very plainly. He says for a number of years a group would have to be in. He is very plain about that.

Q Did you express to Mr. LaVecchia your opinion that so long as these 172,000 shares were outstanding as a voting factor, it would not be possible to get any reputable, high class group of men to take over the management of this company, unless that stock were trusteed to secure their continued office? A I do not recall expressing it to Mr. LaVecchia, but that has been my general tenor. You asked me if a group of men could be gotten. I said an agreement can probably be reached.

The Court: You have already spoken on that line very intelligently.

Q Now, was Mr. Weinberger ever the owner of any Worth Company stock, your former employer? A Pardon me. Let us get that point right. My present employer.

Q Yes, your present employer. What is your answer?

The Court: I do not think—(interrupted).

Mr. Ruback: I think I should be permitted to show interest.

The Court: Bias?

Mr. Ruback: To show bias; to show this witness is closely connected with Mr. Weinberger.

The Witness: I would like to refute that, your Honor.

The Court: What were you going to say?

The Witness: I would like an opportunity to refute that last insinuation, your Honor, because it has been used glibly and broadly, and no basis brought forth.

Q Just answer the question. A He was a stockholder, one of the stockholders of the company.

Q The principal stockholder of that company was Mr. Weinberger's brother-in-law, Mr. Kaplan? A At one time.

Q That is how you became first connected with the New Jersey Securities Company, was it not, through your acquaintance with Mr. Harry Weinberger, and your connection with Worth? A And some of the other directors of our company who hold stock in the New Jersey Bankers.

Q That is how you met Mr. Harry Weinberger, through Worth? A Yes, sir, through Worth, I think through Goldman, Sachs, and six or seven of the biggest banks in New York City. They were all utter strangers to me.

Q Mr. Kaplan still a principal stockholder of Worth? A No, sir; he has no connection with the company.

Q When did he sell out? A Over a year ago.

ROSCO L. STRICKLAND, sworn on behalf of the defendant, testified as follows:

Direct examination by Mr. Glauberman.

Q Mr. Strickland, what is your business? A I am manager of August Brothers & Company, Stock Exchange house.

Q Are you a stockholder of the New Jersey Bankers Securities Company? A Yes, sir.

Q How many shares do you own? A 1250.

Q When did you acquire those shares?

Mr. Ruback: I object.

The Court: Objection overruled.

A 1927, I think it was.

Q Any of your family have any shares in the company besides yourself? A No.

Q Or your friends? A Yes; numerous friends.

Q Were you elected on January 16, 1930, as a member of the board of directors in the New Jersey Bankers Securities Company? A Yes, sir.

Q And subsequent thereto were you elected by the board as president of the company? A Yes, sir.

Q And on April 17th at an election held, 1930, election held at the Robert Treat Hotel, were you re-elected again? A Yes, sir.

Q And subsequently thereto did the board of directors re-elect you as a director? A Yes, sir.

Q And president? A Yes, sir.

Q Prior to your becoming a director of this company, did you know any of the other mem-

bers that were elected with you? A I never heard of any of them until the meeting in the Robert Treat Hotel in January.

Q Do you know Mr. Harry Weinberger? A Yes, sir.

Q When did you meet him? A I met him in 1927, I think it was in September.

Q Since your election, did you on behalf of the board of directors, or of the company, file petitions with this court? A Yes, sir.

Mr. Glauberman: I would like to offer them.

The Court: They are part of the record in the trial we are now trying.

Q Since the election of the board of directors, have you any idea how many meetings the board held? A Why, we have held meetings almost every week. Can easily count that up by the weeks. I would say perhaps 12 or 15 meetings.

Q Will you please tell us what was the main business of those meetings? A Why, that would be a very difficult thing to do. There were so many discussions at various times. Sometimes plans were injected into the meetings whereby—what we would do with the company if we could get back; others we were planning how we might be able to get it back, and the principal thing that was brought out was what we might be able to do with it if we did get it.

Q Now, tell us what those were. A As yet, we have not arrived at a definite conclusion.

The Court: What were the things that were suggested? That would be very interesting.

The Witness: Yes, sir. One or two of the New York members at different times have suggested that we engage a man connected with one of the large New York banks to run this company, if we should get it back. Of course, my personal contention was, why cross the bridge until we get it. I said, we have got nothing to talk about. We are all financially interested in this thing, and naturally we want to work it to the best advantage. We want to when we get the property and determine as to what there is there. Then we can decide. No use making plans until we have something to make them on.

The Court: You knew what property there would be there if the funds were returned to the company. Now, were there no plans projected?

The Witness: Yes, sir.

The Court: Tell me about it.

The Witness: Why, we thought that temporarily at least, it would be best to get some expert advice, if we did not have the ability ourselves, to advise us how to invest, how we should invest the funds; and working along those lines. That is about all that we could do.

The Court: Does that sum it up?

The Witness: That would sum it up, I guess.

The Court: Were there any definite, tentative plans?

The Witness: No.

The Court: No?

The Witness: Nothing, except that we would advise with a good man by the name of Cahill, who said he would be glad to step in with us, and advise with us. He is president of a bank in New York City at the present time, and he said he had had a lot of experience; he was vice-president of the Irving Trust Company at one time, and he said that he would be glad to give us the advice and experience and knowledge, and we thought that would be a very good idea, if we succeeded in getting the property back, to have someone like that to advise with us, but of course, we didn't go so far as to engage anyone.

The Court: Would you have to engage him?

The Witness: Oh, no, not necessarily, except he said that he would be glad to advise with us.

The Court: For pay, you mean?

The Witness: Well, I don't know. I don't know as to that.

The Court: Or just friendly, you don't know?

The Witness: As I understood, he was just friendly to the—(interrupted).

Q How long have you been living in Newark? A Why, I have lived in New Jersey for—(interrupted).

The Court: Newark?

The Witness: Well, I live in Middlewood. I came to Newark in January, 1905.

Q Before you became connected with August Brothers—before you became manager of the August Brothers Company, the company you are with now, what did you do? What was your business? A Why, I was in the banking business.

Q What bank? A The Franklin-Washington Trust Company.

Q Any other banks? A Well, the Weequahic, before we were absorbed by them, or by the New Jersey Bankers, which— While we were merged with the Washington Trust, and then I continued until the first of September, 1929.

Q Until when? A Until September 1, 1929, when I left them to go to August Brothers' business.

Cross examination by Mr. Weinberger.

Q Mr. Strickland, were you president of the Wigwag Trust Company? A I was.

Q How long were you president? A Seven years.

Q That bank originally started with a capital of how much? A $200,000, one hundred thousand surplus.

Q When did it start? A 1921 it was organized.

Q In 1927 what was its capital, and what was its surplus, and its deposits, the total assets? A Capital was two hundred thousand; paid in surplus was one hundred thousand; undivided profits, as I recall, were one hundred and sixty thousand, and the deposits between three and a half to four million dollars.

Q Did that bank pay dividends? A Yes, sir.

Q Did you have occasion to make any investments in the purchase of securities for the bank? A Yes, sir.

Q And who, if anyone, besides yourself, did that? A Why, we had a committee. I was chairman of the committee of investments.

Q Who was the recommending power of that committee? A I was.

Q How much securities did you have occasion to buy, say, on the average during the time you were bank president?

The Court: You were president all the time, the seven years?

The Witness: Yes, sir. Why, we carried in our investments between three-quarters and a million dollars' worth of bonds. We didn't buy any stock.

Q During that time did you keep in touch with the market, and were you familiar with the status of the various securities that you had to buy? A I knew Moody's investment book as well as I knew my Bible. I read that every day.

The Court: What do you read every day?

The Witness: The Bible.

The Court: I thought you meant Moody's.

The Witness: I read Moody's also, your Honor, every day.

Q Since you relinquished your position as president of the Wigwag bank, after its absorption by the Franklin-Washington Trust

Company, have you had occasion to keep in close contact with the status of various securities? A I have.

Q And have your endeavors been limited to the financial field? A Yes, sir.

Q Will you state to the Court what experience you have had with securities since you have retired as president of this bank? A Why, that is all I do now. That is my business, securities.

The Court: What?

The Witness: In stocks and bonds, buying and selling. We run a commission business entirely. We have nothing to offer except recommendations to make when a client comes into our office, and has fifty or a hundred, or a million dollars to invest —we have a few of that kind, perhaps, with a million—we do have clients with some hundred thousands. We make recommendations to them, some of them with a thousand dollars, and some of them with five hundred.

The Court: You run a brokerage shop?

The Witness: Yes, sir, we run a brokerage office.

The Court: You advise your clients as to what to invest in?

The Witness: Oh, absolutely, if they come to us seeking that advise, we have to.

The Court: Usually advise them to buy Government bonds?

The Witness: Yes, sir; if they don't want to gamble.

Q Now, Mr. Strickland, August Brothers are members of the New York Stock Exchange, are they not? A Yes, sir.

Q I believe you have stated you are in charge of their office here in Newark? A That is right.

Q Can you state approximately how many investments you have recommended with regard to financial enterprises, or investments for people who have had occasion to interview you since you have been engaged with August Brothers? A How many?

Q I mean approximately. I didn't mean to itemize them.

The Court: That is his daily work.

The Witness: Oh, I should say perhaps a half dozen a day.

Q Were those recommendations— What I was really getting at was this, was these recommendations based upon studies—your study of the various securities which you recommended? A Absolutely.

The Court: You wouldn't attempt to do it otherwise?

The Witness: No.

Q To return to the New Jersey Bankers, you are familiar with the fact, are you not, that they have approximately a million, seven hundred thousand in cash? A I have been told so.

Q What have you to say with regard to the future generally as to investments based upon the present market, and an available fund of a million, seven hundred thousand dollars?

A I do not get that question exactly. I understand the question, but I don't know what he wants, whether he wants me to say in percentage.

The Court: Any way at all.

The Witness: Well, I think that the fund should be conservatively handled, good management, should give a return from 20 to 30% gross.

Q On what do you base that return? A I base it on past experience.

Q Was your bank a dividend-paying bank? A Yes, sir.

Q And what was the return that paid? A Why, it paid eight per cent. and that was made entirely from the profits on the purchase and sale of bonds. We didn't have to take any of the money earned otherwise to pay the dividend; besides that, we put in the undivided profits of practically $20,000 a year, profits on the sale of securities.

Q For investment, Mr. Strickland, what have you to say with regard to the value of money on—for capital purpose of an investment trust, is it cheap today, or is it dear in getting it together? A It is dear.

Q What would you regard as the approximate cost or expenditures to raise a fund of a million, seven hundred thousand dollars in the form of capital for investment purposes? A At least ten per cent.

Q Could you do it for that price? A Well, I wouldn't want the job, but I think it could be done.

Q Compared to the recent past, we will assume for the past twelve months, what have

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you to say with regard to the general market conditions for the availability of excellent securities, making an excellent return or yield? A Wonderful.

The Court: You say that for twelve months?

Mr. Weinberger: Twelve months.

The Court: Taking a period of twelve months, having in mind the crash in the market?

Mr. Weinberger: Prior to the crash, the high time, and I wanted to take both periods in.

The Court: You are going to develop it fully?

Mr. Weinberger: I am, unless your Honor wants to take the witness.

The Court: No. Go on. The crash is in our minds deeply imbedded.

Q Will you in your own way, Mr. Strickland, just explain to the Court what the advantages are today for investment—to secure investments with a fair and reasonable yield as compared to what they were in the last 24 months? A Well, of course, you take a year ago—(interrupted).

The Court: I think it would have been better if he had started from the time of the crash on. I thought you were going to do that.

Q Taking, if you will, sir, conditions presently, since the crash in November, 1929, will

you give in your own way what advantages, if any, exist with reference to investment in safe securities, fair and reasonable returns, as compared to what they were prior to that time for twelve months? A There is a good many securities selling on a 6% basis now that were selling perhaps on a 2% and 3% basis before the crash.

The Court: Where is there any one that is selling on a 6% basis perfectly safe, that you would have your mother invest her last $10,000 in? Give me such an illustration.

Q I note that you are referring to some paper.

The Court: One minute.

The Witness: I would refer to bonds, your Honor, or stocks either. I have a list of them here that was published in the Wall Street Journal a few days ago. Take Bethlehem Steel. That gives a return in common stock of better than 6%.

The Court: How? Give your figures upon it.

The Witness: It is selling today at 96, and pays $6 a share. It is earning at the rate of $13 a share.

The Court: What was its high within the year?

The Witness: This year it is 110¼—no, 110⅛, or something like that, and low, I think it is about 90.

The Court: Then if one had bought when it was a hundred, it would have yielded 6%?

The Witness: Exactly.

The Court: And at the present price since January 9th to now, it is 24%?

The Witness: That is right, today.

The Court: So your 6% is eaten up by the 24%?

The Witness: Eaten up by the—(interrupted).

The Court: 24%. You figure it that way, from January until now?

The Witness: Yes, sir; I wouldn't have bought it that way.

The Court: Have you any other securities?

The Witness: General Motors is selling on about a 6% yield.

The Court: Illustrate it.

The Witness: It is selling at 50 or 51 today; it pays $3 earnings—earns about four and a half to five dollars a share.

The Court: How is it paying six, if it is only earning four and a half?

The Witness: Pays $3 per share selling at 50, that would be six per cent.

The Court: Sure. Now, the next one?

The Witness: Well, Montgomery Ward pays $3, selling for—(interrupted).

The Court: On 50?

The Witness: It pays $3 on 100, and selling for 45. Sears Roebuck pays 6, that is selling for 83—pays $6 per share.

The Court: You are just picking out some—(interrupted).

The Witness: I was just taking some from this list.

The Court: Taking the more prominent ones.

The Witness: If you want ones that pay 6 per cent.

The Court: No. Six per cent. and safe security, that is what I want.

The Witness: American Telephone, that pays about 4 per cent. on its present market price. United States Steel preferred, I think that is selling on a basis of a yield of 5 per cent. Standard Oil of New Jersey, of course, it is selling on a basis of yield of a little over 2 per cent.; Reynolds Tobacco B, I think is a very prominent stock, investment stock, it is selling on about a 6 per cent. basis.

The Court: Tell me this, will you, what in your line is the significance of a stock that pays 3 per cent. at $50 a share, and selling at 43? What is the significance of that?

The Witness: Why, it would indicate to me that the earnings are not very good, and it is likely the dividend would not be maintained.

The Court: Doesn't it go to the safety and the security? Doesn't it indicate less safety?

The Witness: Surely, the security is less safe.

The Court: I mean the security itself?

The Witness: Not necessarily so.

The Court: The security at par is 50, it sells at 43, would that signify anything as to the security, the integrity of the security,

and its par? Understand what I mean? Do you understand what I mean?

The Witness: No, I do not, your Honor.

The Court: What would cause a stock—what would be the cause for a stock of the par value of $50, selling and yielding 3 per cent. on 50, and selling at 43?

The Witness: Well, it would be in my judgment, that the earnings of the company were such that they might not be able to maintain that dividend.

The Court: It doesn't mean—I do not know—it does not mean that the security—that it would affect the true value of the security. You see you are buying at 50—you are laying down 50, and it is only selling at 43. Doesn't the fact of the selling at 43 indicate that the true value of that stock isn't par?

The Witness: Not necessarily so.

The Court: Would it be an indication of that?

The Witness: It would be an indication if the stock had no friends to bid it up.

The Court: I am not getting at that. I mean par 50, selling at 43, does that indicate an impairment of its capital structure?

The Witness: It may. I wouldn't say necessarily so.

Q Mr. Strickland, stock with a book value much higher than 43, selling at 43, would not indicate an impairment of the capital? A No, of course it wouldn't.

Q The real value is based upon what, of any corporation? A It is based upon a book value.

Q And the book value reflects what? In other words, I take it that it reflects capital, surplus and earnings. That is all it does reflect? A That is the way the book value is arrived at. Take the total number of shares—(interrupted).

The Court: The thing that regulates the price of the stock in the market is the demand for it?

The Witness: That is it.

Q In other words, answering his Honor's question, the bid of 43 would merely be indicative of the fact there were no friends or bidders for that stock? A That is right.

Q It may be due likewise to the availability to that class of stock that forced the market down to that low figure, may it not? A Yes, sir.

The Court: In what way would you say that condition could be created?

The Witness: To force the stock down?

The Court: Yes.

The Witness: Well, by, to use the term that they use in the Street, the bears might short sell—they might dump a lot of stock on the market.

The Court: Rig it?

The Witness: Rig it, to force it down.

Q It is either rigged one way or rigged the other? A That is it.

Q The stock may be worth truly twice what the bid may be, based on actual value, and yet there would be no one available to bid at that price, book value? A Yes, sir.

Q May I refer to the New Jersey Bankers Securities, is it not a fact that the stock of the New Jersey Bankers is being offered as low as $1.50 to $1.75 at this time, when there is cash in the cash box reflecting a much greater value? A Yes, sir.

Q A greater value. I don't know about the "much." It is a fact, is it not, Mr. Strickland, that New Jersey Bankers is being quoted on the market at $1.50? A It is quoted in the Newark papers every day.

Q It is? A Yes, sir.

Q Do you know what price it is quoted at? A Last night the Newark News had it up 2 and 2½.

Q That shows strength?

The Court: Have you got an exchange in Newark?

The Witness: No.

The Court: Who fixes the prices in Newark?

The Witness: It is fixed by the various local brokers. We do not happen to be one of that class, we are New York Stock Exchange.

The Court: You don't trade—(interrupted).

The Witness: No. We don't trade in local stuff.

Q Mr. Strickland, one further question, would you say that success in a great measure, was dependent on management, the future of this company, if the Court should see fit to return its assets? A 90 per cent.

Q What have you to say with regard to the availability of men well qualified to cope with a situation, such as exists in this particular matter? A Why, there are plenty of men that can be had.

The Court: Where can Newark buy a man that New York cannot outbid them?

The Witness: You mean a man that is qualified?

Q Are such men available, as I understand the Vice-Chancellor, in Newark, for example? A Well, I wouldn't say where, but they are available in Newark, New York—(interrupted).

The Court: Men who would qualify in this line?

The Witness: No question.

The Court: Tell me why then, such a man or such men are out of positions if they could make money for their employers?

The Witness: Why, I wouldn't say that they are out.

The Court: You would have to take them from some other concern.

The Witness: Why, certainly. No men who are large enough are out of employment.

Q Mr. Strickland, is it not a fact that taking the history of banking institutions of this State that have been successful, that invariably you find some man or men in that institution who are paid salaries or compensation who do nothing but invest for the particular institution? A I think that is so.

Q Isn't that true with the Fidelity Union, with any bank of any consequence in this State? A Why, I think so.

Q The investment department of a banking institution is invariably regarded as an independent part of the bank's business, is it not? A Well, in the larger institutions.

Q Speaking of the larger. A Yes, sir.

Cross examination by Mr. Ruback.

Q You are of the opinion, Mr. Strickland, that this fund of $1,700,000 could be made so productive as to yield 20 per cent. to 30 per cent. gross per year? A Yes, sir.

Q You express yourself on the basis of a full calendar year? A That is right.

Q How much of that 20 to 30 per cent. gross would be cut into by overhead and operating expenses? A Why, I think from 5 to 8 per cent. It could be run on that basis.

Q And would that range of 5 to 8 per cent. for overhead include the salary of the experienced securities man? A Yes, sir.

Q Do you agree with Mr. that such a man would have to be paid $50,000 a year? A No.

Q What do you think you could secure that type of man for at a salary? A Well, I haven't looked around the market. I wouldn't like to say, but I think you could hire a good man for $15,000, one qualified to handle a fund of ten millions of dollars.

Q And would it be your policy as president of this company to commit to that individual the discretion of buying and selling securities with the company's money? A Well, not necessarily

so. I might want to inject my opinion in the affair. That is, I would want to make recommendations that I would want to be—I would want to have—(interrupted).

The Court: Supervision?

The Witness: I would want to have the privilege of criticizing any investments that were made.

Q But for all practical purposes such a person would be the active manager of the company? A Surely.

Q And the adviser as to the type and quantities of the investments made? A Yes, sir.

Q Now, would it be your judgment and advice that this fund should be invested in the type of securities that you have enumerated by way of example, Sears Roebuck, Bethlehem Steel? A Why, not necessarily so. If you want my opinion, I would recommend that it be all invested in short term bonds.

Q Municipals? A Well, I wouldn't say municipal entirely, and I wouldn't say that it be held there permanently, but for the time being.

Q Short term bonds? A Short term bonds. Some might be municipal.

Q What is your experience as to the usual yield of these short term bonds? A Well, I have a list here that I happen to just have in my pocket, short term bonds here have from ten months up to a year to run. That is quite a long list.

Q In a general way, what is the yield? A Oh, the yield runs anywhere from four to six per cent.

Q And I take it that the six per centers are not as safe, and therefore, not as desirable as those that yield a lower return? A Why, I think they are just as safe. I think they will be safe at maturity.

Q Why the difference in the yield? A Well, because everybody don't think so.

Q Mr. Strickland, you think it possible to make twenty to thirty per cent. by investing this money in good bonds? A Yes, sir.

The Court: How can you get 30 per cent. gross out of investments that pay 6 per cent.? I do not know.

The Witness: May I tell you? Trade. I know one individual, your Honor, if you might permit me to say it—I wouldn't want to divulge his name—that makes 30 per cent. every year trading in bonds.

The Court: We have here two million dollars. You invest it in A1 6 per cent. bonds. Now, at the end of a year you haven't got 30 per cent. on it. How would you make that six run up into thirty?

The Witness: You wouldn't if you invested it and let it lie there.

The Court: You said short term bonds. I want to know how can you run that up five times in the year?

The Witness: By trading.

The Court: You said invest the money in short term bonds.

The Witness: I said that is what I would recommend.

The Court: Then how would you hope to obtain a yield of 30% when the yield of your investment is but six?

The Witness: By trading.

The Court: Tell me what you mean by that.

The Witness: I mean buying and selling. For instance—(interrupted).

The Court: You are still getting six per cent. at most, aren't you?

The Witness: You are getting six while the money is invested, but if the bonds should go up within thirty days ten points and you sell them, you sell a thousand dollar bond for a hundred dollars more than you paid for it, and pick up another one.

The Court: That is assuming that you are always picking up good ones.

The Witness: That is right. It is being done.

The Court: What?

The Witness: It is being done.

The Court: That man who is doing it is being pointed out on the street, I wager.

Q I suppose, Mr. Strickland, that that 30% result that you think can be shown can come only if the capital of this company invested in bonds is turned over several times in the course of a year, and each time the bonds are sold, they are sold at an appreciated price. Is that right? A Surely.

Q Similarly, if the bonds should drop in market value—(interrupted).

The Court: The answer is there.

RECESS.

AFTER RECESS.

Q I think, Mr. Strickland, you told us that your bank, your bank paid dividends of 8% per annum on a capital of $200,000? A That is right.

Q All that capital, of course, was employed in your bank business? A Yes, sir.

Q And in addition to that capital of $200,000 you employed depositors' money of perhaps three and a half million dollars? A Yes, sir.

Cross examination by Mr. Fitzsimmons.

Q You say you first met Mr. Weinberger in 1927? A That is right, yes, sir.

Q And you have been very friendly with him since then? A I have not. I haven't seen him since then until just recently.

Q What do you mean by recently, in the January meeting? A Why, in January, yes, sir.

Q And that friendship developed in 1927 when Mr. Weinberger paid you $600 a share for your bank stock? A Not friendship.

Q Acquaintanceship? A Yes, sir. Mr. William Harris negotiated the deal. Weinberger came in with him when the paper was made. That was the time I met Weinberger.

Q That stock you sold to the New Jersey Bankers at $600, the book value was worth about $250, wasn't it? A It was worth $450.

Q Four hundred and fifty book value? A Yes, sir.

Q Now, you remember attending a meeting of the alleged new board of directors of this company in Mr. Nirenstein's office about a day

or two prior to the April meeting? A Meeting of the—(interrupted).

Q Of the directors of this company, the alleged board of directors? A Did I attend?

Q Yes. A Yes, sir.

Q Did you call that meeting as president? A No. I don't know that I called the meeting.

Q Who called the meeting? A Why, we just got together. There was no particular—there was a waiver signed, I think, for the meeting.

Q And what was the purpose of that meeting?

The Court: When was this?

Mr. Fitzsimmons: A day or two prior to the April meeting, which your Honor had directed.

Mr. Ruback: April 28, 1930.

Mr. Fitzsimmons: Mr. Ryan says it was a day or two before the meeting.

The Court: Identify which meeting it was.

Q I refer to a meeting at which a substituted trustee was appointed for Mr. Markley. When was that meeting held? A Well, I don't recall the date, Mr. Fitzsimmons, but it was a meeting at Mr. Nirenstein's office. Perhaps it was the 28th of April.

Q Now, you attended that meeting.

The Court: Who called it there?

The Witness: Well, Mr. Glauberman was the one that got the directors together for the meeting.

The Court: Were they all there?

The Witness: I think there was one or two absent, or two or three absent. I don't know whether I can name them or not, but was there.

The Court: You think there was one or two absent?

The Witness: Yes, sir. I say one or two. One man I think was sick, another one was in Europe.

Q You say it was just called. How did you get notice? A Mr. Glauberman.

Q How? A He told me on the telephone.

Q The minutes show that five directors were present at the meeting out of the nine, is that right? A Well, whatever the minutes show. I thought they were all there with the exception of one or two.

Q The minutes show that Mr. Christie, Mr. Kipnis, Mr. Quint, Mr. Ryan and Mr. Strickland were present. A Well, I assume that that was all, then.

Q Who else attended that meeting? A Why, Mr. Glauberman. No one else attended the meeting of the board.

Q Mr. Glauberman, was he there at the meeting? A That is who I say, I called him Mr. Gliberman or Glauberman, whatever the name is.

Q Mr. Nirenstein there? A Yes, sir.

Q Where was Mr. Weinberger? A Mr. Weinberger was somewhere else. I don't know where. He came in the meeting.

Q Came in when? A He came in after we had been in session for half an hour or so.

Q Do you know Mr. Stafford? A I have met him.

Q How many times? A I met him once.

Q When? A Met him at the Robert Treat in January at the stockholders' meeting.

Q Who proposed electing Mr. Stafford as trustee in place of Mr. Markley to vote the Weinberger stock?

Mr. Glauberman: I object.

The Court: It is not cross examination. You are making him your own witness now.

Q Who proposed Mr. Stafford's name at that meeting? A Why, I do not recall. There was about half a dozen or more names suggested, I know—mentioned—four or five, and after discussing all of them it was decided that Mr. Stafford would be perhaps the most desirable man on account of his reputation, and being a large stockholder in the company, and being liked by most people. That is all I know about it. So I said it was agreeable to me, if he is a man of integrity.

Q How many shares of stock did Mr. Stafford own? A I understood that he owned a thousand.

Q How many of the remaining directors knew Mr. Stafford?

Mr. Glauberman: I object.

A I couldn't answer that. I don't know.

Q And you only met Mr. Stafford once? A That is all.

Q Did you realize when you voted for Mr. Stafford that he had been closely associated with Mr. Weinberger for a number of years?

Mr. Glauberman: I object. There is no evidence that he was.

The Witness: I did not.

The Court: If you said, did you know, the question would be proper.

Q I ask you now, do you know, or did you know when you voted for Mr. Stafford that he had been closely associated with Mr. Weinberger for a number of years? A No, I did not.

Q Did you make any investigation to convince yourself that he was a proper man to vote this large block of stock? A Nothing, except from reputation.

The Court: Did you know of him before that day?

The Witness: No, I did not. I met him at the meeting of the stockholders in January. I never knew him before that time.

The Court: Did you hear any one speak of him between that time and the time you met him in New York?

The Witness: I don't know that I did.

The Court: Then you probably took the recommendation of your associates?

The Witness: Most likely.

Further cross examination by Mr. Ruback.

Q You are in daily attendance at August Brothers? A On my days on.

Q You expect to resign from your present employment and became actively engaged in the business of the New Jersey Bankers Securities if it be reorganized? A I do not.

Q How much time do you expect to give to the interests of the company? A All that is necessary.

Q How much time will you be able to give? A All that is required.

Q After three o'clock? A Yes, sir; after three o'clock. From three o'clock in the afternoon until ten the next morning.

Q From ten to three you are otherwise engaged, pretty busy? A Yes, sir, from ten to three I am engaged.

The Court: This was a special meeting you had in New York?

The Witness: Yes, sir.

The Court: How are your special meetings called, do you know, under your by-laws—according to your by-laws?

The Witness: Why, waiver of notice signed.

The Court: All the directors signed waiver of notice for this meeting?

The Witness: I understand they did. All that were there signed, and I understand that those that were not there signed. I do not know. I haven't seen it.

The Court: You did not have it before you?

The Witness: No, sir.

The Court: Was it a formal meeting?

The Witness: Yes, sir; it was a formal meeting.

The Court: Well, how did you account for the absentees, I mean at that time?

The Witness: Well, I don't know that we even attempted to account for it. I un-

derstand one of them was sick, and another man was in Europe or Florida.

The Court: What?

The Witness: He was either in Florida or Europe, or somewhere else.

The Court: Had not been notified of the meeting?

The Witness: They were all telephoned, I understand.

The Court: What?

The Witness: They were all called on the telephone.

The Court: What do the by-laws provide?

Mr. Glauberman: Five days notice, if your Honor please, but they all signed a waiver before the meeting. One man was going to Europe that night, but did not go. He signed before he left.

Mr. Ruback: Have you got that waiver handy?

Mr. Glauberman: Yes, sir.

SAMUEL KIPNIS, sworn on behalf of defendant, testified as follows:

Direct examination by Mr. Glauberman.

Q Mr. Kipnis, where do you live? A 3100 Lakeland place, Brooklyn.

The Court: Put the waiver in evidence.

(Paper marked Exhibit D. 8 of this date.)

Q You are a stockholder of the New Jersey Bankers Securities? A Yes, sir.

Q How many shares do you own? A 1,000 shares.

Q When did you purchase them? A 1927.

Q Any shares owned by your relatives? A My wife owns 1,700 shares, and my partner owns 1,700 shares.

Q When were they acquired? A 1927.

Q Will you give us approximately the investment that that represents?

Mr. Ruback: I object. I do not see how that is at all pertinent to this inquiry.

Q What did you pay? A I paid over $55,000 for them.

Q Where did you buy them? A I bought some from the New Jersey direct, and some through brokers.

Q What did you pay a share? A $16.50 a share.

Q That was during the excitement? A It was during the excitement, during the good days when they were supposed to be sold for $25 in a few weeks.

The Court: I did not hear that.

The Witness: When they were supposed to be sold for $25 in a few weeks. The prospects were supposed to be very bright for the New Jersey Bankers.

The Court: Who told you all that?

The Witness: Well, that was the rumor on the market.

The Court: You cannot always believe rumors.

The Witness: No, not exactly.

Q What is your business, Mr. Kipnis? A Manufacturing corrugated paper products.

Q With which companies are you connected? A I am president and general manager and general purchasing agent of the National Container Corporation, Long Island City; president of the Columbia Corrugating Company; president of the National Corrugated & Paper Box Company, New York; president of the Air Tube Realty Company, Long Island City; president of the National Container Corporation of Philadelphia; president and director of the Container Credit & Statistical Bureau, a trade organization in New York City.

The Court: Are these all under one roof?

The Witness: No, sir.

The Court: Where are they located?

The Witness: Some in New York, Long Island, Philadelphia.

The Court: Factories?

The Witness: Factories. The National Container is the largest plant of its kind in the east.

The Court: What is its business?

The Witness: Occupies seven acres of ground.

The Court: What do you do?

The Witness: Manufacture corrugated paper products and cases, all for the shipping trade.

The Court: What are the others?

The Witness: The same thing.

The Court: All these other companies the same thing?

The Witness: Yes, sir.

The Court: They are all yours?

The Witness: Not all mine. I have a—(interrupted).

The Court: Controlling interest in the lot?

The Witness: Not exactly, but I am a large stockholder in every one of them.

The Court: You are the managing head of all of them?

The Witness: I am the managing head of all of them, yes, sir.

The Court: The aggregate?

The Witness: Over $3,000,000 in the National Container alone.

The Court: How much do you handle, of which you are the main head?

The Witness: I purchase under my own supervision over $2,000,000 worth of merchandise.

The Court: Pretty busy man, I should think.

The Witness: I am a busy man. I wouldn't be here unless—it is just because I have so much money involved—invested here. I would never spend a minute here.

Q Do I understand the National Container Corporation is listed in the New York Trade Exchange? A On the curb, that is right.

Q How many shares do you own of the National?

The Court: No.

Q Now, Mr. Kipnis, were you elected on January 16, 1930, as a member of the board of directors? A Yes, sir.

Q And were you re-elected on April 17, 1930? A Yes, sir.

Q Did you attend all the meetings that were called by the board of directors? A Yes, sir.

Q Will you please give the Court an idea of the object of those meetings, what you did? A At the board of directors' meetings? Talking over the New Jersey Bankers situation, what can be done in order to get the company back to the stockholders; trying to formulate plans of what we would do if we would get the company back.

Q Were any plans formulated? A Not exactly.

The Court: What plans were discussed?

The Witness: What would be the best thing for the company to do.

The Court: What plans were discussed?

The Witness: Plans, if we would get the company back to try to secure expert advice on investments, hire the best man possible to run the company—I mean an investment man to run the company for the directors.

The Court: Any further plans?

The Witness: Well, a good many of the directors thought that it was a bit too premature to try to reformulate the company, because we didn't have the company.

Q Before you were elected to the board, did you know any of the other members that were

elected with you? A I didn't know any of them.

Q Are you acquainted with Mr. Harry Weinberger? A I saw Harry Weinberger once before.

Q When? A In 1929. I met him at the office of, I think, Speilberger, at Somers and Lafayette streets. That was by accident that I met him.

Q Spielberger of the Equitable? A Yes, sir.

Q Equitable Finance? A Yes, sir.

Q Did you ever have any business dealings with Harry Weinberger? A Never.

Q Do you recall my asking you to give me bank references after you were elected to the board? A Yes, sir.

Q Are those the references you gave me? Will you please read them? A Yes, sir.

Q What are the banks?

Mr. Ruback: I object.

The Court: I will assume that this man is a man of means, great business undertakings, and active in his own business, and minding his own business he has made money.

Cross examination by Mr. Fitzsimmons.

Q Mr. Kipnis, you were one of the five directors who attended the meeting of the board of directors at Mr. Nirenstein's office, when they selected Mr. Stafford as trustee in the place of Mr. Markley? A Yes, sir.

Q How did you come to go to that meeting?

The Court: He was there.

The Witness: I attended every meeting.

Q How did you come to go? A I was called up by Mr. Glauberman to attend the meeting.

Q Did you know Mr. Stafford? A No, sir.

Q Did you ever meet him? A I met him once.

Q Where? A At the Robert Treat in the first meeting in January.

Q In January. Who suggested Mr. Stafford's name as trustee in place of Mr. Markley? A There were a few names suggested.

Q Who suggested his name? A I don't remember exactly, but I suggested Mr. Glauberman myself. I thought Mr. Glauberman should be the man that would assume the voting right on 176,000 shares.

Q You voted for Mr. Stafford when you only met him once? A I voted for Mr. Stafford because at the meeting we discussed the various people, and he was one spoken of very highly.

Q Who spoke highly of him? A Mr. Glauberman himself.

Q Mr. Glauberman? A Yes, sir.

Q Any other of the directors speak highly of him? A Mr. Strickland said from what he knew of him and what he heard of him he was a very high, reputable man.

The Court: He is a man who can be spoken of highly, is he not?

Mr. Fitzsimmons: I am not attacking Mr. Stafford. I am trying to show that of the five directors present three now admit they didn't know him.

The Court: I didn't see that there could be any reflection on Mr. Stafford.

HYMAN KRAMER, sworn for defendant, testified as follows:

Direct examination by Mr. Glauberman.

Q Where do you live, Mr. Kramer? A 159 Passaic avenue, Passaic.

Q What is your business? A Lumber merchant.

Q Give us the name of the company. A Kramer Lumber Corporation, Clifton, New Jersey.

Q How big a company is it? A Well, it is a pretty good sized company.

Q How much business do you do a year? A About a million dollars.

Q Are you a stockholder of the New Jersey Bankers Securities Company? A I am.

Q How many shares do you own? A 2,000.

Q When did you acquire those shares? A In 1927.

Q How much did you pay for them? A $20,000.

Q Any shares held by your relations? A My son has 500, and a number of other relatives have quite a few shares, altogether about 4,000.

Q You got in on the ground floor? A Yes, sir, I got in on the ground floor.

Q Are you the Mr. Kramer that was elected to the board of directors on January 10, 1930, and re-elected April 17, 1930? A I am.

Q Did you know any of the men of the board before you were elected? A I only knew one slightly.

Q Who was that? A Mr. Silberstein.

Q Are you related to Mr. Weinberger? A I am not.

Q You are not his cousin, are you? A No.

Q Do you know Mr. Weinberger? A I do.

Q How many years do you know Mr. Weinberger? A Oh, about twelve or fifteen years.

Q Had you had any business dealings with Mr. Weinberger? A I did.

Q Will you please tell us what type of business dealings you had with him? A Well, we owned a building together once.

Q When was that? A 1927, I believe.

Q What happened to it? Do you still own it? A No; Mr. Weinberger bought me out, my share, and took it over himself.

Q Have you any business relations with him now? A No.

Cross examination by Mr. Weinberger.

Q Mr. Kramer, Mr. Weinberger has been your attorney, has he not, for many years? A He has.

Q And you were a director, were you not, of the Hobart Trust Company? A I was.

Q Prior to that, the Service Trust Company? A I was.

Q It was as a director that you acquired stock of the New Jersey Bankers at $10 a share, was it not? A It was.

Q Did Mr. Weinberger have anything to do with your election to the board of directors, so far as you know? A No.

Q Did you accept the office of director because of Mr. Weinberger, or at his solicitation? A No, sir.

Q How many years did you serve as a director of the bank? A Ever since the organization of the Service Trust in January, 1929—January 1, 1929.

Q Have you had any experience while connected—did you have any experience while connected with the banks in the purchase of securities as a member of the executive committee? A I did.

Q And were you a member of the credit committee, which extended loans by the banks while you were a director thereof? A I was.

The Court: Service or Hobart?

The Witness: Service Trust Company.

Q Also a member of the executive committee of the Hobart Trust Company? A Yes, sir.

Q Both? A Yes, sir.

Q You had prior to your engagement in the lumber business been in what business? A Flour business.

Q How many years were you in the flour business? A About 18 years.

Q I believe you conducted one of the largest flour businesses in this State? A I did.

Q What office, if any, did you hold while connected with that business? A I was the owner of it. It was not a corporation.

Q The business was operated under what name? A H. Kramer & Company, flour merchants.

Q That was trading under the firm name of H. Kramer Flour Company? A Yes, sir.

Q Have you had occasion to make investments in securities, and so forth, during the time you were engaged in business? A Not to a great extent.

Q Your endeavors were mainly confined to your own business? A That is right.

Hyman Kramer, cross.

Q May I ask you now, why is it you are assuming the directorship of this company? A Because I have a lot of money at stake, and also a number of my relatives who invested their money at my advice. I feel obligated to them to see what I can do so as to get some of their money back.

Q Have many of your friends likewise become stockholders of this company while you have been concerned with it? A Quite a few.

Cross examination by Mr. Ruback.

Q You were not a member of the board of directors of the Hobart Trust Company while Messrs. Hughes and Berger owned the bank, were you? A No, sir.

Q You became a member of that board after the New Jersey Bankers acquired it? A After the New Jersey Bankers acquired it, that is right.

Q And who invited you to join that board? A I was on the board of the Service, and as the Service took over the Hobart, joined into one—merged—why, I guess the way it was I was automatically elected as director of the Hobart.

Q So that at the time that you joined the directorship of the Hobart bank, you had already been one of the directors of the Service Trust Company? A Yes, sir.

Q That was a bank also organized by Mr. Weinberger? A Yes, sir.

Q You were on the first board of directors, were you not? A Yes, sir.

Q At Mr. Weinberger's solicitation? A No, I don't think so. Mr. Cary—Mr. John Cary, of Passaic.

Q You were at that time a client of Mr. Weinberger? A I was.

Q Isn't it a fact that most of the members of the board of the Passaic Trust Company were either friends or clients or relatives of Mr. Weinberger? A Why, I don't think they were relatives.

Q Either friends or clients? A Well, they were all Passaic people, so far as I know, except one or two, and naturally—Mr. Weinberger was born in Passaic—I guess he knew them all.

Q You knew the other men on the board? A I did.

Q You met them occasionally at Mr. Weinberger's office? A I did.

Q Most of them were clients of his? A I don't know that.

Q How many years did you serve on that board, speaking of the Service Trust Company? A From the day it was organized—I guess it was about four years or so.

Q During the entire time Mr. Weinberger was the president of the Service Trust Company? A That is right.

Q And prior to the time you went on the board of the Service Trust Company, you had no business position on any board of any bank? A I had not.

Q And you have had none since excepting the period of service on the board of the Hobart? A No, I have had none since.

Q No other bank has invited you since to join their board? A No.

Q Now, during the time you were on the board of the Hobart were you a member of any committee? A I was on the finance committee.

Q Is that the committee that was charged with the passing of credit? A Yes, sir.

Q And did you attend the meetings of that committee? A I did; yes, sir.

Q Quite regularly? A Yes, sir.

Q Did you give your approval to the loans that were made by the Hobart from the time the New Jersey Bankers acquired control of that bank until the banking commissioner closed the bank? A I didn't quite get that question?

The Court: Did you give your approval to the discounting of notes that were discounted by the bank up until the time the bank was closed?

The Witness: I gave my approval or disapproval to all, depending on what kind of notes were presented before the committee.

The Court: He means of those that were discounted.

The Witness: Of those that were discounted I gave my approval, yes, sir.

Q Did you give your approval to the writing up of the bank's building from half a million to a million dollars? A I did.

Mr. Weinberger: Just a minute. Counsel has asked a question. I do not want to object to it, but I would like to note the fact that the question contains a statement which is not correct.

The Court: You may develop that later.

Q Except for your purchase of shares of stock in the New Jersey Bankers Securities Company, you haven't bought or sold many shares in other companies? A No, not many.

Q Of course, you have not been in the securities business? A No.

Q Never operated any investment trust? A No.

The Court: Were you a director of the bank?

The Witness: New Jersey Securities?

The Court: Yes.

The Witness: No, your Honor.

Q You have not particularly informed yourself about the character and operation of investment trusts? A No, sir.

The Court: This man is a merchant.

Cross examination by Mr. Weinberger.

Q Mr. Kramer, I omitted a question. Were you, or are you president of a building and loan? A I was president of a building and loan for five years. I am a director of the same building and loan now.

Q What building-loan was that? A Enterprise Building Loan of Passaic.

Q That is not one of the building loans to which I was associated—Mr. Weinberger was associated? A No, sir.

Q How large a building loan was that? A I believe its assets now are around three-quarters of a million.

Q Were you connected with a finance company? A Yes, sir; I was president of the Superior Finance Corporation.

Q That company was engaged in the financing of what? A Automobiles.

Q And to what extent did Mr. Weinberger—was he connected with that company either directly or indirectly? A No, sir.

Q How big a business did that company do, Mr. Kramer? A I believe we did about a million and a half a year.

Q That company was engaged in the financing of automobiles on the installment plan? A Yes, sir.

Q Is it out of business now? A No, it isn't. I sold my interest out.

Q You sold it out and made enough to go in the lumber business, is that it? A Yes, sir.

Q Coming back to the question asked by Mr. Ruback with regard to the increase of the building from half a million to a million, is that a correct statement of the facts? A I remember there was an increase there; I do not recall exactly what it was.

Q Was the building written up from $215,000 to $700,000? A I don't think that was—I forget the figures. I remember the building was written up and I gave my approval for it. I do not remember the figures right now.

The Court: Wasn't it five hundred thousand to a million?

Mr. Weinberger: No; the increase of the capital five hundred thousand to a million. The building was written up—(interrupted).

Mr. Ruback: Mr. Weinberger was right about that, your Honor. I fell into an error.

Mr. Weinberger: There was a write up of half a million to double the capital; that was from two fifteen to seven thousand.

Q You were on the appraisal committee which valued that building, were you not? A I was.

Q Was the increase made from $215,000 to approximately $700,000 a reasonable increase? A It was at that time.

Q Have facts since that time developed—(interrupted).

The Court: I don't think I will go into that. He said it was reasonable. He was on the committee.

Q Were you in the real estate business? A I was.

Q And did you have a conservative appraiser to appraise the value of that building before it was written up? A We did.

Q Mr. Harry Weinberger was not on the committee which did the valuation or appraising of the building? A He was not.

CLARENCE G. WOLFE, sworn on behalf of the defendant, testified as follows:

Direct examination by Mr. Glauberman.

Q What is your business, Mr. Wolfe? A Investment research work, banking.

Q With whom are you connected? A Investors' Research Bureau.

Q You are in charge of the office in Newark? A State of New Jersey, five offices, Trenton, Paterson, Jersey City and New Brunswick.

Q How long were you connected with the Investors' Research Bureau? A A year.

Q Before that who were you with? A Arthur Lipper & Company.

Q Who are they? A Well, they are Stock Exchange members of four cities, with five offices.

Q What was your job there? A Research work, investment suggestions; advice in general.

Q Research work in what field? A Bonds, preferred stocks and a few common stocks, bank stocks, insurance stocks.

Q In the investment field? A Yes, sir.

Q Before you were connected with Arthur Lipper & Company—how long were you with Lipper? A Two years.

Q Before that, were you connected with any other investment company? A I helped organize G. E. Barrett & Company.

The Court: He asked you whether you were connected.

The Witness: Yes, sir; I helped organize and was connected with G. E. Barrett & Company, 120 Broadway, underwriting securities.

Q How long were you with them? A Four and a half years.

Q And before that with what company were you? A I was with a bank that was absorbed by the Chase National Bank, for fourteen years.

Q Doing what? A Well, in various clerical capacities, and when I resigned from there I was in charge of the securities, called special accounts; taking care of securities for our out of town correspondents, country banks. We considered country banks anything outside of New York City.

The Court: Even Chicago.

The Witness: Even Chicago, sir. Our largest account was the First National Bank of Chicago, kept a daily balance of over a million dollars, and anything outside we had to handle it that way.

Q Are you familiar—did you familiarize yourself with the condition of the New Jersey Bankers now? A Not particularly, not interested—(interrupted).

Q Do you know the present condition of the New Jersey Banking Securities? A In a vague way.

Q Do you know that it has about a million, seven hundred thousand dollars?

Mr. Ruback: I object.

The Court: It has about a million, seven hundred thousand dollars in cash. If he doesn't know it, he should know it. Everybody else knows it.

The Witness: I have heard rumors about it. I don't know it.

Q Are you familiar with the market condition? A Yes, sir.

The Court: Today?

The Witness: Yes, sir.

Q Are you familiar with investment companies today? A Yes, sir.

Q Will you please tell his Honor the feasibility of a company having a million, seven hundred thousand dollars in cash to go into the—to resume its business by investing in securities?

The Court: I think you ought to add there, if you want an answer to your question, with a board of directors composed of honest business men, a corporation of an unsavory reputation. I do not think you meant the question you asked. You meant whether a corporation with two million, what could you do with two million dollars, or do you mean this company?

Mr. Glauberman: That is one of the elements. I would like to know first of all what the company can do with two million now.

The Court: I think you are doubling up. Bring it all in.

Q Assuming a company—(interrupted). A I understand the question, if the Court will permit me to answer it. This company, or any company with two million to handle, is in a very good position to make money with any reputable body of business men, just ordinary horse sense and gumption, plus honesty, they cannot help but make money. There is an awful lot—awful lot of people with very little reputation making money in bank circles and investment circles; all sorts of business. A fund of two million dollars is a sufficiently dignified amount to call for due consideration, but not too much consideration. It is a small amount compared with money as spoken of today, when you take investment trusts that run up to a hundred million, two hundred million, a billion, and so on. We all know, more or less, what they are, who they are, and what they represent, very high grade, legitimate concerns; but two million dollars is not to be frowned at as being too infinitesimal.

Quite a trust. It has got enough foundation to work on to return a very substantial rate of interest. And I had in mind the New Jersey Bankers' stock, if properly handled, take it away from Newark, New Jersey, where it not only has no friends, but they do not know how to appreciate a real stock operation, to sponsor it and cater to it, and see that it is managed. It is along those lines that experience in investment trusts generally show that money can return 18 to 20 per cent.

The Court: I do not think you are going to be very popular with the Newark bankers.

The Witness: I am sorry if I disagree with them, but Newark bankers have not any monopoly on the handling of funds, and a great many of them took their education in New York City before they came out here—some came from other towns.

You can get a return of oh, 18, 20 or 25 per cent. on your two million dollar fund. That, with six hundred thousand shares, which I understand you have outstanding, would return, oh, about three-fourths of 1 per cent, 70 to 75c a share. Any stock that is earning 70 to 75c a share should be selling in the open market for at least ten to twelve times its earnings, selling for 8½ to 9 dollars a share. I have heard and read somewhat of the losses of your New Jersey Bankers, and with a proper handling of the residue of their fund, they should be able to recover, recapture the losses that the company has sustained up to the present time, or when taken over by the receivership. All this fund needs, or any fund—

I will make it impersonal—any fund of $2,000,000, more or less, all it needs when it gets into a jam like this is just a little intelligent nursing, and safeguarded from any needless milking, I might say. A little more nursing and a little less milk. Too often a very respectable fund gets dissipated through the wrangling of all concerned. It makes very little headway. It is there to be made. All it needs is to start up and function. If it lies dormant, everybody loses interest and it fades out of the picture. With just ordinary horse sense and gumption under competent people who make a study of investment—I do not mean to go out blindly and buy anything because somebody else recommends it—but along the lines that regular concerns employ, placing it in any one's hands that is qualified to pass upon the subject, that they can make money with a fund of a million and three-quarters to two million dollars, and can, necessarily, grow in proportion. Sometimes a very snug amount of two million can be handled and make a greater return comparatively than twenty million or two hundred million.

Cross examination by Mr. Weinberger.

Q Has the fund of two million any value, constituted as it is in a neuclus of two million—of a fund of two million? A Well, assembled capital has a premium of at least ten per cent., and if you went out shopping you would find people that would pay more than that.

Q What have you to say as to the availability of men to operate a company of this character

and size, about a two million dollar fund? A I don't get the question?

Q What have you to say with regard to the availability of men—(interrupted). A The woods are full of them.

Q What would you say as to compensation? A Compensation for whom?

The Court: Those that are in the woods.

The Witness: They are the ones that will get you out of the woods, your Honor.

The Court: You said the woods was full of them.

Q I was going to ask you what woods you had in mind. A You do not look for men of the description that I have reference to in blacksmiths' shops. You would naturally go to the financial centers, Chicago, or Philadelphia, or New York City.

Q Are there such outstanding men available, we will say, as would be in a position to take hold of a proposition of this character? A In what cities, which cities?

Q Anywhere? A Yes, sir; there is nothing unique about this situation.

Q Are men being engaged daily and discharged daily, you might say, with financial institutions where they have suspended business, or been an abandonment of the particular endeavor, and so forth? A Oh, in remote cases. There is always more or less purging, or for reasons unforeseen it is far more expedient to tie up with some other arrangement.

Q What is the present market condition with regard to it being an ideal moment to step in for investment purposes with a fund of two mil-

lion dollars? A Well, I know you attorneys like yes or no, but when it comes to that I would be a very poor expert to answer it yes or no. I can qualify that, if the Court will permit me, or indulge me to make it rather a little lengthy. This is a very poor time for investment. It is a very dangerous time we are passing through, and most every individual thinks themselves quite capable of attending to their investmnts, and they are not. You never hear of them as not being able, they do not naturally shout it from the house tops, but they are not.

The Court: Not what?

The Witness: Not what, sir?

The Court: I don't know. I couldn't get the word.

The Witness: Not capable.

The Court: In handling their own?

The Witness: In handling their own. But they wouldn't admit that, naturally, and when they meet with defeat, why they keep it very much to themselves. As you remarked a little while ago, when they accomplish it on the credit side, they did it all themselves, but in the investment field we do not mind that. We feel we are giving them good service, and let them have all the glory. We have given good service and value for value received, and we are satisfied to let them have the glory.

The Court: You get the fee, anyhow.

The Witness: Yes, sir; we make sure of that.

Cross examination by Mr. Ruback:

Q You have been with this Research Bureau about a year? A Yes, sir.

Q When you joined them you were quite experienced in the security field, market conditions and quotations, and so forth? A Yes, sir.

Q What research work have you been doing during the last year? A None whatsoever.

Q What is the character of this organization here in Newark that you are connected with? A The character is beyond reproach—oh, I thought you meant whether they were in good standing or not.

The Court: No.

The Witness: The nature of the business is to help people who would go out and buy New Jersey Bankers stock, and what-not, and give high prices for it, and get in a jam, with the local situation out here, if you try to sell a hundred shares of anything, it would break your market so you couldn't dispose of anything, and we try to steer you clear.

The Court: What is that?

The Witness: If you bought in the local market any securities, New Jersey Bankers, or what-not, even among our higher grade institutions, and you tried to dispose of your holdings, you would have an awful time, your Honor, to dispose of it without breaking the market.

The Court: A hundred shares would break it?

The Witness: Yes, sir.

The Court: That isn't any market.

The Witness: No, sir. You do not have a market out here. That is the reason you should remove—(interrupted).

Q Now that you have explained to us—(interrupted).

The Court: He had not. I interrupted him. Go on with your story.

Mr. Ruback: The Court wants you to proceed with your story.

The Witness: I am waiting for you to ask a question.

Q What does your Research Bureau do to cure this evil? A We do not attempt to have any cure-all. We prescribe certain fundamentals to follow, and we charge you with a fee for the services to keep you out of buying such securities, putting it only in triple A bonds—that is the highest grade of bonds you can buy—and gilt-edged stocks in worth-while companies, utilities, corporations, all leaders on the New York Stock Exchange.

Q You charge a fee for persuading your clients—(interrupted). A Not persuading.

Q Dissuading your clients from purchasing stocks other than those you recommend? A No, sir.

Q How do you make your profit? A We charge you a fee for telling you what you should do.

Q You recommend purchases to your customers? A Yes, sir.

Q You recommend nothing that is unlisted? A No, sir.

Q You have not heretofore recommended anything that is not listed? A No, sir.

Q You have recommended things that are not listed? No, sir.

Q Are you incorporated? A Yes, sir.

Q In this State? A New York.

Q Then this is a branch office in Newark? A Yes, sir; one of 47 branch offices throughout the country.

Q You are in charge of it? A Yes, sir.

Q Are you an officer of the company? A No, sir; I am divisional manager.

Q Work on a salary? A No, sir.

Q What are your average earnings in that position? A I haven't got any. I am not dependent upon it. I do it for pleasure.

Q It pays you nothing? A Hasn't so far.

Q You still have hopes? A Not necessarily. I fortunately do not have to work. There are a lot of things I do for nothing.

Q Do much of a business here in Newark? A In New Jersey we do.

Q Just one question—(interrupted).

The Court: No; ask him a dozen. The man has got something in him I want to know.

The Witness: I will be very glad to tell the Court.

Q You think you could, if given this fund of two million dollars, or if your recommendations were followed, this fund could be made to produce about 20 per cent. a year? A Yes, sir.

Q Net? A Wouldn't gross be pretty good?

Q I ask you whether that would be net—whether your statement was 20 per cent. net? A I will make it net.

Q How much gross?

The Court: Are you making it just to accommodate counsel?

The Witness: I want to please him if I can. Not altogether, your Honor. We will make it 22 gross, 20 net.

Q And for 2 per cent. would operate this company, including the salary of an experienced security expert, rent, telephone and other overhead? A I don't know whether I would or not. Two per cent., that is pretty cheap.

Q That was your estimate, Mr. Wolfe? A That was my estimate? How did you arrive at that, sir?

Q Your opinion is that you could produce 22 per cent. gross with this fund? A Yes, sir.

Q 22 per cent. gross profit, and 20 per cent. net profit. What does that difference of 2 per cent. represent? A For example, I will charge 4 per cent., make it 18 net.

Q Eighteen net? A Yes, sir.

Q Now, of course, you would conduct your business lawfully—wouldn't you? A How?

Q You would conduct the business of this company lawfully? A Lawfully?

Q Yes. A I don't know of any other way it could be done.

Q You wouldn't lend this money at usurious rates of interest? A If they gave me enough security I would.

Q Was that contemplated when you suggested 18 to 22 per cent.? A No, sir. I just wanted to go into the ramifications and possibilities of all that could be done.

Q I didn't ask you—(interrupted). A There is a lot of things you could do.

Q The door is wide open for you to tell us how you would make 18 to 22 per cent. A Indeed? I am not being paid any fee for telling you how to do all this. I am just out here to help the case along, if I can, by invitation.

Q Who asked you, Mr. Wolfe, to come here? A I invited myself here, and they saw me here, and they asked me to stay.

Q First day you are here? A Yes, sir. I recognize a few of the parties.

Q You came here knowing this inquiry was going on? A Yes, sir. Mr. Strickland invited me.

Q Were you an associate of his in any business? A No, sir.

Q Did you know you were going to testify here? A Yes—No, I didn't know I would be called to testify in the case, I might be called. I didn't know that I would be.

Q You were prepared, however, because of your expert experience? A No, sir—in a vague sort of way. I wouldn't have to be prepared to answer these questions, because they are just very apparent, that all you gentlemen are trying to accomplish could be accomplished without any effort if you handed it into channels that do it in the daily grind, the daily grist.

The Court: How would you do it if I handed it over to you?

The Witness: Well, your Honor, personally I would have to sit in conference with a few other bright minds. That lets me in. Pardon me. I withdraw that. I have no hatchet up my sleeve. I have no

cure-all for any financial lesion. But with diligent study, and appliance of any fund or funds, and it is possible to have more than one fund at a time, because you can apply the same principle to one investment trust, or the management of the accumulation of investment trusts—this is the particular season and time to invest in short time notes—keep your capital employed at a fairly modest return without any jeopardy of having the market depreciate as to notes because of their short term that are bought for that particular purpose, because they do not fluctuate, and the shorter the term the bigger the yield, and as you approach the maturity date, those notes that they are already selling below par, climb to near to par—they do not fluctuate an eighth or a quarter of one per cent. from the time you buy them until they mature, and you do not have to hold them until maturity if you want to use your capital for other purposes; you sell them—there is a ready market for them—it is the very safest place to put funds that belong to other people. From short term notes we go into bonds. An excellent bond, triple A bond, today would cost you a trifle above par, 6 per cent. bond, 5½ per cent., 5¾ per cent. yield. You likewise would devote a part of the fund to common stock of uncommon companies, and would hold those common stocks for market appreciation, watching the trend at all times as to when the style is again going to change—there is just as much style, your Honor, in buying securities as there is in anything else. There is a time for launch-

ing bond issues; there is a time that is best considered for a stock issue, and everything has its day, and it moves more or less in circles or cycles, and while you may not be able to get in that trend at its very inception, or get out of it at its very end or the terminal of it, it is possible and is being done regularly by associations who have studied the situation to get into that trend shortly after its inception and close out their holdings before that cycle is completed, thereby taking no risk, but adding to the income of the fund very materially to help increase the returns on your more conservatively invested funds, namely, in bonds or preferred stock, short term notes, and whatnot. That is my answer, sir.

The Court: Did you tell this story to counsel, to Mr. Glauberman, before you went on the stand?

The Witness: No, sir.

The Court: Did he talk to you about it?

The Witness: No, sir.

The Court: Did you testify before Judge Runyon?

The Witness: No, sir; I do not know the gentleman.

ABRAHAM QUINT, sworn on behalf of defendant, testified as follows:

Direct examination by Mr. Glauberman.

Q Where do you live? A 27 West 96th street, New York City.

Q What is your business? A I retired about three years ago. I have investments in real estate and other matters.

Q What was your business—that was your business? A No, sir. I was for seven years in the dress making manufacturing business.

Q And what do you do now? A Well, my brother and I have some real estate interests that we attend to.

Q Are you a stockholder in the New Jersey Bankers Securities Company? A I am.

Q How many shares of stock do you own? A My brother and I own 650 shares.

Q How much do you own? A I own half. We own the 650 jointly.

Q When did you acquire the stock? A Quite a while ago.

The Court: In 1927, I suppose.

The Witness: I think so.

Q Were you elected on January 16, 1930—you are one of the members of the board that was elected on January 16th and April 17th? A Yes, sir.

Q Did you know any of the members of the board before you were elected? A Previous to my election, no.

Q Did you know Mr. Harry Weinberger? A I never met Mr. Weinberger previously. Not even on January 16th did I meet him. I met him quite a long time after at one of the proceedings in this Court.

Q You never had any business dealings with Mr. Weinberger then? A Never.

Q Ever have any business dealings with the previous board of directors of the New Jersey Bankers? A No, sir.

Q Have you attended most of the meetings of the board of directors of the New Jersey Bankers? A I have attended all of the meetings.

Q What are the plans, if any, if this Court returns the property to the company, as far as you know, on the part of the board of directors?

Mr. Ruback: I object.

The Court: Ask him what happened with reference to that.

Q What did you do at those meetings, at the board of directors' meetings?

The Court: Were future plans discussed?

The Witness: Yes, sir.

Q What was done? A We had quite a few talks about our plans if the company was returned to us, or to the stockholders. My own personal idea was—(interrupted).

The Court: Oh, no. As expressed in your meetings?

The Witness: The general expression—(interrupted).

The Court: As you expressed them at the meetings.

The Witness: Yes, sir.

The Court: Tell us those.

The Witness: My own personal opinion and the opinion I expressed at the meeting was—I thought it was most desirable in case the property came back to our hands, to merge it with some good, first class com-

pany. If such plans couldn't be carried out immediately, that we would try and get the very best organization—I know that there are some very fine organizations in the investment field—that will act in an advisory capacity, will advise the company how they can make their investments and what they should buy, and of course then it would be a matter for the board to decide whether the investment that these companies recommended was proper and fit, and I think that in making such investments I think we should always make it with a view of always carrying a substantial amount of money in cash.

Q Those were the opinions that you expressed at the meetings of the board of directors? A Yes, sir, those are the opinions I expressed.

The Court: How were they received by your fellows?

The Witness: I think it was the concensus of opinion among our fellow directors —(interrupted).

Q What? A The opinions I expressed I think expressed the concensus of opinion of the other directors.

Q That you merge with somebody? A Our thought was that if we could get some A No. 1 company ,and if we could merge positively, it might be well to do that, and if we couldn't effect the merger, that we could carry on by being advised by most competent authorities.

Q You expected to merge, if you did merge, with a good company upon a book value basis of your stock? A Upon a book value basis.

Q Basis of your stock? A And a deal which we felt ought to be proper to the stockholders.

Q If you only got the book value that would be the money value? A The book value of good investment trusts.

Q What I am trying to get is this: You would expect to merge upon a ratio of your—(interrupted). A Of our cash value as against the cash value of that other company. It doesn't follow—(interrupted).

Q In other words, add the cash of this company to the capital of some other company, and let the other company run it? A Exactly, if it was a first class company.

Q But there was no definite plan adopted by the board of directors? A We couldn't adopt a definite plan, because we didn't come into possession of the company.

Cross examination by Mr. Weinberger.

Q Mr. Quint, when you say you have been in business for thirty years—as investor for thirty years? A Yes, sir.

Q How large an institution did you conduct? A We did a business of several million dollars a year.

Q When you say several, how many? A Our business when we retired in 1926, our business was about two million dollars.

Q And what was the firm name or corporate name of the business? A A. Quint & Brothers, under the style of the American Ladies Dress Company.

Q Did you manufacture, or were you—(interrupted). A We manufactured; we made nice goods.

Q What particular part did you play in this business? A I did the buying of all the silk, piece goods, and looked after the manufacturing.

Q Looked after the cutting, and so on? A Not the cutting, because we had a man at the head of each department. I supervised the business generally.

Q The financial end of it? A Why, yes; my brother was with me. My brother did the selling end of it.

Q Did you have anything to do with the financing? A I did all of the financing. I was the head of the firm, so I did all the financing.

Q You made a statement a moment ago that you had men in the various departments that were in charge, and that you supervised the work? A Yes, sir.

Q Did you have occasion to employ very many men? A Yes, sir.

Q How big an establishment did you have? A Had about 350 people.

Q And was it encumbent upon you to make selection of men for the particular work in that business? A My brother and I met at regular intervals, and we decided upon the policy of the business and the people to be employed.

Q You sold out, did you, or did you retire from business? A We retired.

Q By liquidation, or sale? A We liquidated.

Q Your own business? A Yes, sir.

Q And that was when? A In 1927.

The Court: Is that about the time you bought this stock?

The Witness: I wasn't here when it was bought. My brother bought it. I was in Europe then.

Q You cannot be charged with having acquiesced in it? A I have made mistakes, too. My brother bought the stock, but I have made mistakes. I am not infallible.

Q As a matter of fact, Mr. Quint, what have your endeavors been since your retirement from business? A Well, we had, my brother and I, during the time we were in the dress business, had some real estate interests, and so I devoted all my time to it.

Q Are they substantial holdings? A Very substantial.

Q Are they—(interrupted). A I should say they were fairly substantial.

Q Give us an idea of what they aggregate approximately. I do not want to go into your personal affairs, but some idea? A I think that is rather personal, but if you want to establish my worth—I wouldn't want to answer such questions, but I will say this, that I am personally worth much over a hundred thousand dollars, if that will answer your question.

The Court: In money?

The Witness: In money.

Q Have you occasion to make any investments in securities? That was what I was laying the basis for. That was all. A Yes, sir.

Q What is the nature and character of your investments? A Well, I bought bank stocks of the very best kind; still on that; stocks of the Guaranty Trust, Manufacturers, National City.

Q Did you buy high or low, if that isn't too personal? A No; we bought most of them over a period of years. I bought Guaranty about eight or nine years ago.

The Court: Didn't buy Manhattan about a year ago?

The Witness: No, I didn't—I never owned Manhattan.

Q National City about a year ago? A No. I got that through an exchange of Farmers' Trust Company. I had Farmers' Trust Company originally. It didn't owe me anything, anyway.

Q May I ask this question: What has prompted you to accept the directorship of the New Jersey Bankers? A Well, it wasn't alone the 650 shares that my brother and I hold—it wasn't a great deal, but quite a number of our friends, intimate friends, were advised—my brother advised them to buy it, and so there is quite a number of our friends got into it for a considerable amount, and they said, you got us into it, why don't you get us out of it. I said, what do you want me to do. They said, go on over and attend that meeting, and see what you can do. Find out what you can about it, and let us know about it. While I was there somebody got up that knew me and proposed my name to this board of directors.

Q Was it Mr. Weinberger, if you know? A I said at the outset that I never knew Mr. Weinberger.

Q I know, but I want to know—(interrupted). A No. I never knew until several weeks ago out in the lobby of this court room here.

Q Mr. Quint, in formulating a plan as to the future of this company, would you state to the Court what elements you would consider in determining what should be done with this fund? A In handling a large fund of this kind, I

think any director would be committing a crime if he attempted to make investments of his own knowledge or volition. I think that in handling a big fund of that kind he owes a great trust to his stockholders, and in carrying out a trust of that kind he should be more careful than he should be if he was handling his own money. If I was handling my own money, I would go ahead and invest it to the best of my knowledge and ability, but handling a huge sum of money like this and having in mind my trust to my fellow stockholders, I should be more careful; I should want to be advised by the very, very highest class investment advice as to the investments, and even then I would want to be very, very careful. I wouldn't at any time want to invest all of the company's money. I would always want to feel that I was buying outright, I was buying the very best securities in the market; securities that had an opportunity of appreciating, and then I would always want to operate so that we had substantial cash—sum of money in the bank; only to proceed on the most conservative, careful basis.

Q Have you conferred with any men in the financial world with regard to the feasibility of the continuation of this company? A Why, I know quite a few men, for instance, men that are connected with the Central Manufacturing Bank & Trust, whom we banked with for twenty years or more. They often advise me about my own investments.

Q Are you personally familiar with statistics, and can you read a statement of any magnitude with regard to the assets of a corporation? A I can read the average statement. Some of them may be a little bit difficult, but generally I haven't any difficulty.

Q Were you prompted or actuated to go on this board for any reason other than the fact that you were willing to serve as a director to protect the interests of the stockholders? A There was no other purpose. Another thing that appealed to me in taking this directorship was, as I thought, there was a depletion of the assets. I know when the present receiver came into possession of the company here appointed by the Court, that I received a letter from Mr. Stamler and LaVecchia, and as I recall it, they said they had appointed an accountant to make an examination of the assets of this company, and they stated that after the accountant had completed an investigation and they had considered the value of the assets on the most conservative basis—they went on to say, don't sell your stock, your stock has a book value of $12 a share, if my memory serves me right, I think that is right.

The Court: The letter is in evidence.

Mr. Glauberman: I did not mean to go into that phase of it.

The Witness: I thought that was what you wanted to know. You wanted to know why I came into the proposition. Well, when I saw the assets of the company were being depleted rapidly, I thought it was time that the stockholders stepped in and took charge of this property. The property belongs to the stockholders.

Q Was there any other reason, personal, or prompted or actuated by anybody outside? A No reason, no, sir, beyond the fact that I happened to be a stockholder and came into this

proposition to conserve the assets of the company.

Q Are your duties such, or your business engagements such as to prevent you from giving the necessary time for the administration of the affairs of this company, if perchance the Court decided to return the assets to the company? A No; I have the time to give to the company.

Cross examination by Mr. Ruback.

Q Using your business experience, and with your devotion to the interests of the company, and your high character—(interrupted). A Thank you.

Q —how much could you produce on this fund of a million, seven hundred thousand dollars as an annual yield? A My dear sir, I do not propose to tell you what I could produce at all. I do not know, beyond the statement that I have made that I would be very careful. I would do the best I could. By nature, I am very conservative, and before I made an investment of one dollar of this company's money, I would make darn sure that it was good. I am always less concerned with the returns than I am with the safety of the investment.

Q Well, now, in investing this money in securities of the very highest type, safe and sound securities, what is your reasonable expectation as to the annual earnings by this company? A Well, I couldn't give you any definite sum. I think it would be foolish to do it. I do not think anybody else can. I think that if you invest in first class companies, in good industries of the country, believing in the company

as I do and its future and its expansion, and over a period of years I see some of these industries grow from little companies into great big companies, with tremendous earning power —I believe if you invested in such stocks over a long period, I think you could get some very handsome appreciations.

Q Then your notion would be to invest this money for the purpose of its yield, and not for immediate re-sale? A Well, I would invest both for yield and for re-sale, both. I think it would be very foolish to consider it merely from the standpoint of appreciation. I think the capital invested should bring a yield.

Q What would influence your selection of a type of security? A I think you would have to weigh it carefully, and as I said, I would only be interested in buying the very best.

Q Safety of principal would be your first consideration? A My first interest would be to safety. Safety first, then yield, and then appreciation.

Q Of course you realize that the chances of appreciation are offset by the risk of depreciation? A Well, if you—if you compare—if you are making a comparison of the condition as it existed during the high market of 1929, and after the crash, that is a condition that has not existed for many years. I think as a general proposition—if you look at the key industries of the country, at our very best industries —I remember five years ago I bought General Electric at 82 or 83 a share; it has been split four for one, and it is still $84 a share. Now, there are a great many other industries, like United States Steel, and other companies, that I have faith in. I do not say necessarily that I

am sitting here, or sitting at a board meeting telling our company what investments they shall or shall not make; to the contrary, I do not propose to tell them at all what kind of investments they shall make. I propose to be guided by the very best advice obtainable. As a matter of fact, when I came into the situation, I wasn't even in favor of continuing the company.

Q I was coming to that in a minute. It is your notion if this company continues, you should employ an expert in the security field, and that by the judgment of that expert, your board of diretcors shall abide? A Why, it would be up to the board of directors to pass on it.

Q What is your own opinion of that? Would you abide by the judgment of a man hired to advise you? A Not if it didn't meet with my judgment.

The Court: What?

The Witness: Not if it didn't meet with my judgment.

The Court: Then why employ him?

The Witness: They might advise you to buy twenty different kinds of securities; I might disagree on ten, and I might consider the other ten were all right. I don't think it follows you must accept the advice of such a person in toto.

The Court: You do your lawyer, your priest.

The Witness: Of course, you do your lawyer, because I know nothing about law.

The Court: You know nothing about stock either.

The Witness: But I have had a little experience in buying stock on my own account, and I buy only from individual judgment.

The Court: You know that is quite a science, just as law is, is it not?

The Witness: I think it is a science, but I might like a certain industry and may not like others, and if I had the choice of twenty stocks to buy from, I would say I like these ten better than I do the other ten; buy ten rather than buy the twenty; I don't like the other ten.

Q When you spoke of your business amounting to two million dollars a year at the time you retired, you did not mean the capital invested in your partnership, you meant that the volume of business? A Sales volume, yes, sir.

Cross examination by Mr. Fitzsimmons.

Q Mr. Quint, you attended a meeting of the directors at Mr. Nirenstein's office when you elected Mr. Stafford? A Yes, sir, I did.

Q Did you know Mr. Stafford? A No, sir.

Q Did you ever meet him before that meeting? A No, sir; I never met him at all.

Q Don't know him now? A No; never met him.

Q Now, do you think it was very conservative judgment on your part to vote for a man who has the power of 172,000 shares of voting stock without even knowing him? A Well, I will tell you. I proposed two other gentlemen myself.

Q Answer the question. A I am going to answer your question. I say I proposed two other names myself. I don't want you to feel I was sitting in there like a dummy when I had my own views upon it. I proposed the names of two other men, and I was for these two other men I proposed, because they were stockholders, and because they were 100 per cent., but they finally told me about this man—what did you say his name was?

Q Mr. Stafford. A Mr. Stafford, and we could not agree. We had quite a discussion about it, and the thing that decided me was that I understood that he met with the approval of Judge Backes, and I thought if he met with the judge's approval that was good enough for anybody.

Q Who told you or gave you the impression that Vice-Chancellor Backes made any suggestion regarding Mr. Stafford? A Nobody said that he had suggested his appointment. I didn't say that. I said I understood that he had—that this Mr. Stafford met with the approval of the Chancellor.

Q Who made that statement? A One of the directors. I do not recall who it was.

Q Which one? A I do not recall who it was.

Q Now, you are the fourth director—(interrupted). A I understand also he had a thousand shares of stock and that he was a very able lawyer, and very honorable man. Am I mistaken, Mr. Fitzsimmons?

Q About his stock? A About his being high class, very honorable.

Q No question about that. A I guess we did elect the right man after all, didn't we?

Q Four directors have stated they did not know Mr. Stafford, and voted for him. The only other man we haven't heard from was Mr. Christie. Can you say that Mr. Christie made the statement that Mr. Stafford was agreeable to the Court? A No, I do not recall him—(interrupted).

Q Who mentioned Mr. Stafford's name at the meeting? A I do not recall who did. I honestly do not recall who did. There was talk about Mr. Stafford, and I said I was for two other men, and finally when they told me that Mr. Stafford had a thousand shares, he was very honorable, and all that sort of thing, and he was at one time, I think, holding very high office in this State, and that he was reported to meet with the Chancellor's approval, I said, well, if he meets with the Chancellor's approval, I am for him.

Q You don't know who made that statement? A I have answered as well as I know how.

Cross examination by Mr. Weinberger.

Q Who were the two names you suggested? A I suggested Jacob Klein, who had a thousand shares of stock, a very honest and a very fine man, and then when there was—(interrupted).

Q And who else? A And then I suggested the name of Louis Cohen, who was also a stockholder, very big merchant and very fine man.

Q Both New York men? A Both New York men.

Q Did Mr. Weinberger suggest that he objected to Mr. Klein, because he happened to be Mr. Weinberger's father-in-law's attorney? A Yes, sir; that was the objection he raised.

Q Mr. Klein is one of the outstanding lawyers in New York, is he not? A Yes, sir; he is.

Q You didn't know of the fact that he was my father-in-law's attorney until I suggested it? A No. He was my attorney.

Q He was also your attorney? A Also my attorney.

Q Was it stated there that Vice-Chancellor Backes had approved Mr. Stafford as a former director of the New Jersey Bankers Securities? A Yes, sir; that is why I didn't want to vote for him, and that is why I finally voted for him, because the Vice-Chancellor approved.

Q Did you gentlemen resolve among yourselves that a stockholder should be trustee in this case and none other? A Yes, sir.

Q You stated that Mr. Stafford owned a thousand shares? A That was my impression.

Q Wasn't it fifteen hundred shares that he owned? A I wouldn't be sure. My impression was a thousand shares.

IN CHANCERY OF NEW JERSEY.

May 29, 1930.

Between

SOLOMON BERNSTEIN,
Complainant,

and

NEW JERSEY BANKERS SECURITIES COMPANY,
Defendant.

Continuation of hearing pursuant to adjournment before Court and counsel as before.

Mr. Ruback: The secretary of the New Jersey Bankers Securities Company received from the post office returned envelopes where the addresses were not found. Those envelopes number 388, representing that many stockholders, and those envelopes contain proxies addressed to stockholders holding of record 7,376¾ shares.

The Court: Is all the other record in with reference to the election on April 17th?

Mr. Ruback: I am going to offer that now. I offer in evidence all proxies that were returned to the office of the company for the meeting of April 17th.

(Papers marked Exhibit C. 1 of this date.)

Mr. Glauberman: Does that include all those that Mr. Lum counted?

Mr. Ruback: Yes.

The Court: Is the result of that election on record?

Mr. Ruback: Yes, sir, in the report. I couldn't find any record of the offer of the Master's report, but Mr. Glauberman tells me it was offered and received. I have no distinct recollection of it, so I will now make the offer of Mr. Lum's report as to the result of that election, as well as the minutes of the meeting. I think they are all in, I am not sure of it.

The Court: Do they show clearly the result?

Mr. Ruback: They do, sir.

I offer the minutes of the first stockholders' meeting.

The Court: That is the speeches?

Mr. Ruback: Yes. It contains the various challenges made by the stockholders present to the meeting.

Mr. Glauberman: I am willing to consent to any matter that Mr. Ruback wants to offer without letting the whole record go in.

The Court: Now, let it also be understood that all papers which were handed to the witneses which by accident were not marked, be offered in evidence.

Mr. Glauberman: I offer the petition filed by the present board. I don't think it is a part of this proceeding. Any objection?

Mr. Ruback: No. I want to offer the entire file of the case No. 2. I offer the entire file.

The Court: That lets that in.

(Minutes of the stockholders' meeting of January 14th and 16th marked Exhibit C. 2 of this date.)

TESTIMONY CLOSED.

FINAL DECREE APPOINTING STATUTORY RECEIVERS AND GRANTING INJUNCTION.

Filed June 5, 1930.

IN CHANCERY OF NEW JERSEY.

74/351

(Suit No. 2.)

Between SOLOMON BERNSTEIN, *Complainant,* *and* NEW JERSEY BANKERS SECURITIES CO., a corporation, *Defendant.*	*On Bill, etc.* *Final Decree appointing Statutory Receivers and Granting Injunction.*

This matter being opened to the Court by Messrs. Leber & Ruback, solicitors for the complainant, in the presence of Isadore Glauberman, solicitor of the defendant company and Harry H. Weinberger, solicitor, *pro se;* and the Court heretofore, by its decree bearing date August 8, 1929, having found that "the defendant's business has been and is being conducted at a great loss and greatly prejudicial to the interests of its stockholders, so that its business cannot be conducted with safety to the public and advantage to the stockholders, and further that the said company is without a board of directors to carry on its business and functions, but being also of the further opinion that it may be for the best interests of the defendant company that the Statutory Receiver warranted by the Court's

said findings of fact should not at this time be appointed"; and in and by its said decree ordered that "it is reserved to add to the foot of this decree that the defendant corporation and its officers and agents be restrained and enjoined from exercising any of its privileges or franchises and to appoint a receiver or receivers with powers granted by the 'Act Concerning Coporations' 1896, and the several supplements and amendments thereto;" and the matter so reserved now coming on to be heard on an order to the stockholders and creditors of the defendant company to show cause before the Chancellor at Chancery Chambers, Newark, N. J., on Tuesday, the 13th day of May, 1930, why it should not be further ordered that the defendant corporation and its officers and agents be restrained and enjoined from exercising any of the said company's privileges or franchises and why a receiver or receivers should not be appointed with the powers granted by the "Act Concerning Corporations" 1896, and the several supplements and amendments thereto, and it appearing from proofs submitted and filed herein that service of said order to show cause was made upon the said company and upon its stockholders and creditors, in the manner and within the time directed and limited in and by said order to show cause; and the Court having proceeded to take further proofs adduced by the parties and having considered the proofs and the arguments of counsel and it appearing to the Court as it has heretofore found the fact to be, that at the time of the filing of complainant's bill herein and of the inquiry conducted by this Court upon the return of the order to show cause advised at the time of the

filing of said bill of complaint, on July 25, 1929, that the business of the defendant company had been and then was being conducted at a great loss and greatly prejudicial to the interests of its creditors and stockholders, so that its business could not and cannot be conducted with safety to the public and advantage to the stockholders,

It is, therefore, on this 29th day of May, 1930, by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, ORDERED, ADJUDGED and DECREED that the defendant New Jersey Bankers Securities Company and its officers and agents be and they are hereby restrained and enjoined from exercising any of the defendant company's privileges or franchises and from collecting or receiving any debts or paying out, selling, assigning or transferring any of its estate, moneys, funds, lands, tenements or effects, except to the Receivers hereinbelow named.

And it is further ORDERED, ADJUDGED and DECREED that John J. Stamler, Esq., and Nicholas LaVecchia, Esq., both of the City of Newark, be and they hereby are appointed receivers of the said defendant, New Jersey Bankers Securities Co., and of all its assets and property of every character and description wheresoever situate, with full power and authority to demand, sue for, collect and receive, and take into their possession all the goods and chattels, rights, and credits, moneys and effects, lands and tenements, books, papers, choses in action, bills, notes and property of any and every description belonging to the said defendant, New Jersey Bankers Securities Co., or to which it may be entitled, and to sell, convey and assign any or all of the real and personal estate of the said corpora-

tion and to possess and exercise all the rights and powers, and to do and perform all the duties imposed upon them and required by law and especially by an act entitled "An Act concerning corporations (Revision of 1896,)" and the acts supplementary thereto and amendatory thereof.

And it is further ORDERED that the said Receivers, before entering upon the discharge of their duties, shall take the oath of office prescribed by law, and shall also enter into bond to the Chancellor of the State of New Jersey, with one or more surety or sureties, in the penal sum of Two Hundred & Fifty Thousand Dollars, conditioned for the faithful performance of their duties, which said bond shall be approved as to form and security by one of the Special Masters of this Court.

And it is further ORDERED that the said Receivers shall take possession of all the property and assets of the said defendant corporation and account for the same as this Court shall hereinafter direct, and that the said defendant corporation, its officers, directors and agents, shall forthwith assign, transfer, convey and deliver to the said Receivers, all of the property and assets of the said corporation, both real and personal, wheresoever situate and of whatsoever it may consist.

And it is further ORDERED that the said defendant corporation, its officers and agents, and all persons claiming under it, shall be and they hereby are, restrained from interfering with said Receivers taking possession and of managing said property, and that all persons whosoever, and especially the creditors of the said defendant corporation, shall be, and they hereby are, restrained from bringing any action or pro-

ceeding at law or otherwise against the said corporation and from taking any further proceedings in any action or proceedings heretofore commenced.

And it is further ORDERED that said Receivers have and they are hereby given the right and power to employ and pay all needful agents and servants, and generally to do all acts and things proper or necessary to be done to protect the property and rights of which they are hereby appointed Receivers for the benefit of the creditors and stockholders of the said company, with leave to apply, from time to time, whenever necessary, and as they may be advised for instructions touching all and singular their rights, duties and liabilities in the premises.

E. R. WALKER,
C.

Respectfully advised,

JOHN H. BACKES,
V. C.

STAMLER TESTIMONY RE SERVICES.

IN CHANCERY OF NEW JERSEY.

June 24, 1930.

Between

SOLOMON BERNSTEIN,
Complainant,

and

NEW JERSEY BANKERS SECURITIES CORPORATION,
Defendant.

Transcript of testimony taken in the above entitled matter before his Honor, John H. Backes, Vice-Chancellor, at the Chancery Chambers, in the City of Newark, New Jersey, in the presence of Messrs. Leber & Ruback, for complainant; and Mr. Isadore Glauberman for defendant.

JOHN J. STAMLER, sworn for complainant.

Direct examination by Mr. Ruback.

Q Mr. Stamler, when did you take possession of the assets of the New Jersey Bankers Securities Corporation? A July 25th, 1929.

The Court: I think I will refer it to a master to take the testimony.

Mr. Ruback: Is it your Honor's thought that the testimony might be very voluminous?

The Court: I thought so.

Mr. Ruback: It will not be.

The Court: All right.

Mr. Weinberger: It is my thought it ought to go to the master. The reason I suggest it is this: I do not believe the stockholders know this matter is coming on today.

The Court: I thought they were pretty well represented.

Mr. Weinberger: There were a number of persons who did appear here with regard to the fees. I think your Honor announced the matter would go off and there would be a public hearing had, that is, open hearing on the matter. It was left in that situation.

The Court: That is what I am trying to fulfill now.

Mr. Weinberger: The point I am making is that they do not know today is the day.

The Court: I did not indicate that I would make any fixed allowance, but allowance on account.

The Court: What is your notion, that they be given notice?

Mr. Weinberger: Yes, sir; I thought perhaps it might be on notice.

The Court: I did make that public announcement that I would hear testimony. The matter has been continued from time to time. They are bound.

Mr. Weinberger: I do not believe anyone could possibly have anticipated there would be a hearing such as you are having today.

The Court: I directed counsel to give notice to you and Mr. Glauberman on the assumption you represented everybody.

Mr. Weinberger: I did not get the notice, but I am willing to waive it.

Mr. Stamler: We are asking for a temporary allowance. For the purpose of this record a hasty survey, which will take only probably half an hour to show really what was accomplished, will suffice and justify the Court to make some allowance to us and to counsel. It is only on account. I feel that in the twenty-five years I have been at the Bar, or twenty-eight, it is the first time out of many, many cases, that this course has been taken on a temporary allowance. Of course, on final hearing, proof ought to be produced, but it often has been waived, but this is a temporary allowance, and the court on its own motion, knowing of the case, as it does, may make a temporary allowance where counsel are responsible or where the receiver is responsible with the understanding that they return if your Honor exceeds the proper amount.

The Court: What temporary allowance are you asking?

Mr. Stamler: We feel we are entitled to $25,000, to be on account. In view of the fact that we have handled upwards of three million dollars of assets and further, in view of the fact that the operating income of the company was over sixty thousand some odd dollars in the ten months we operated it and our expenses only sixteen thousand dollars, it is well within reason to ask for such an allowance, and the Court is fully familiar

with the situation. Just to give you one item in the work done by Mr. LaVecchia which comprised of the sending of over four hundred thousand letters and I personally sent over eight thousand from my own office. All this was done under our supervision. It was a tremendous pile of work. We spent twenty-five hundred dollars for stamps. The money has been invested and kept properly invested to pay us income of sixty thousand dollars for ten months. I have that calculated to the thirty-first of May and our expenses were sixteen thousand dollars. Over five thousand for mailing and printing, and rent for meetings. Just a survey of that I feel it is sufficient for your Honor to pass upon a fair temporary allowance to us at this time. It is an estate that will have for distribution over two million dollars. I am not making a reckless statement—a statement that is conservative, and we handled over three million dollars of money, and we did work day and night on this matter. It is most unusual to take testimony on temporary allowance.

The Court: Nothing is unusual.

Mr. Ruback: I think that if you heard in a general way the statement of the receiver and counsel, that would be sufficient for present purposes.

The Court: Yes, but I cannot limit the other side on cross examination.

Mr. Glauberman: The Court may know the receivers deserve it, but the stockholders do not know it. When the stockholders see that the receivers are getting seventy-five thousand dollars—it may be well deserved,

but it is shocking to them. It was for that reason your Honor suggested taking tesimony in open court. Everybody wants to see a man paid for his labor. The cross examination will be to bring out the facts.

The Court: You cannot limit this.

Mr. Glauberman: Naturally not.

The Court: I will go on until four o'clock and then hand it over to Mr. Litwin to finish it up.

Q In what condition did you find the affairs of the New Jersey Bankers the day you took possession? A It had approximately $150,000 in cash and the rest of the assets were represented by stockholdings in three banks and other securities which the corporation then owned.

Q What were the three banks? A The banks were the Hobart Service Trust Company, the Lebanon National Bank and the Amboy National Bank.

Q In which institutions the New Jersey Bankers had controlling stock? A Yes, sir.

Q What are the conditions today with respect to the assets? A We have on hand certificates of deposit invested at four per cent. in banks $762,169.80; cash in banks $180,465.82; municipal bonds $243,957.98; interest due on bonds $26,-252.44; other stocks and bonds on the present market $413,724.00 making a total of $1,626,-570.04. In addition thereto we have the obligation of Weinberger upon which we expect to collect as follows: 1,000 shares Hobart Service stock valued at $30,000; real estate investment $100,000; 9 guarantors at $50,000 each of which we expect to collect $300,000.

Q You expect to make six of those guarantees good? A We expect to collect money from all except Mr. Campbell, certain amount. I think Mr. Campbell cannot be collected. Mr. Evans, Mr. Smith, Mr. Schoen, Mr. Roegner and William Harris the full sum should be collected from them; from James F. Minturn, Teddy Edwards and Mr. Bidwell, I believe $25,000 can be collected.

Q Each? A Each. Campbell is doubtful.

Q Assuming those collections testified to by you are, in fact, realized, what total will you have in your hands for distribution? A Over $2,000,000. During the period that we were operating the company our income was $67,438.67 and the total expense was $16,660.70.

Q How much of that $16,000, Mr. Stamler, was printing expenses? A The printing expense was $5,791.42.

Q That consisting in main of printing notices sent to creditors? A And various reports and letters. Such items. The salary account was $6,313.75, and the rent account, which amounts to $166 a month.

Q What happened to the bank stocks owned by the company on the date of your appointment? A We took possession of them.

Q What has happened to the stock since? Where are they? A We sold the Hobart Service, Lebanon National and the Perth Amboy National bank stock and odd lots of other stocks.

Q You have liquidated all bank belongings of this company? A Yes, sir.

Q Which were in existence at the time of your appointment? A Yes, sir.

Q Now, will you in a general way state the services you have rendered as receiver since July

25th, down to the date of this hearing? A Immediately upon our appointment as receiver, Mr. LaVecchia and I proceeded to Passaic with a view of going over the situation as to the Hobart Service Trust and if possible interest local bankers to buy or acquire that bank. The same day we addressed a letter to Mr. Roegner and Mr. Hughes advising them of our appointment and also of the information that we had had that they were interested in buying the stock and that they had heretofore made an offer on the stock and that we would be very glad to see them next day at the Hobart Trust Company for the purpose of talking over the situation, so we were there on the day of our appointment and the day following our appointment as receivers and we went over the situation of the bank. We were in consultation with the bank examiners and I personally examined the entire records of the bank in order to acquaint myself as to its condition at that time. That same evening I also spent with Mr. Smith, the Commissioner of Banking and Insurance and Mr.
who was his counsel. That was spent at the house of Mr. Smith with a view of devising some plans and means if possible of opening the bank as speedily as possible. The next day I received—we received, rather, a call from the prosecutor's office wanting information in connection with alleged offenses that were—charges against officers or certain former officers of the company. That data was promptly gotten together and it was voluminous. We spent nights on it and furnished that to the prosecutor and subsequently this receiver, speaking for myself, appeared in court before the Grand Jury and testified in the matter. Immediately upon our appointment

as receivers, Mr. LaVecchia and I agreed to subdivide our work. Mr. LaVecchia was to take charge of the office and I was to do the negotiating and follow the banks because I was more familiar with the banks than Mr. LaVecchia was. However, nothing was to be done by either one of us of any moment unless we both agreed and concurred in our joint action. So we followed—I reported if I were alone, doing a thing alone, I reported the next day to Mr. LaVecchia and we always met together, or, if Mr. LaVecchia did anything he reported to me, so we know each day what work each one was doing and what was going on and we had a very pleasant relationship from the time we started up to the present time. We meet practically daily for that purpose. The records of this court disclose what finally happened with the Hobart Trust Company and for the purpose of our testimony we ask the Court to refer to that, to the records in the case, for it itself discloses what was done. A matter of great importance at that time was also the Lebanon Bank in New York which was then in such condition that the department of—the comptroller's department was threatening to close it. I caused a special meeting of the directors to be called the evening—the Monday following our appointment which required real earnest thought and effort on the receiver's part. In the first instance there was an outstanding option of sale of this bank to a man by the name of Reilly—man by the name of Frank A. Reilly, at some tremendous and fictitious price, I believe, running in the neighborhood of over three hundred dollars a share—three hundred and ten dollars a share. We owned twenty-six hundred shares of that stock. Mr. Reilly immediately put

in charge of that bank a man by the name of McMahon and he was promptly elected president and—this was on the 5th day of July, 1929. We were appointed on the 25th. Mr. McMahon was a former banker and after we checked him up we found out that his reputation in banking was not of the best. In fact, criticized by every bank he was employed with—resulting finally in his discharge in the wrecking of a bank at Bayridge, New York. I also found that this Mr. McMahon who was then the president associated himself with this famous Judge Vance who is now on trial, and he was supposed to be the chairman of the board of this bank. Mr. Reeves, who was then the Chief National Bank Examiner of this district, conferred with me and we caused an investigation to be made concerning that gentleman, and we found that his reputation was that of a man who goes into anything and permits his name to be used for any purpose whatsoever, and we were much concerned then that this bank may sustain a serious or substantial loss. Under arrangements with the department an examiner by the name of Mr. Frank was assigned to the bank and remained there until proper readjustment could be made, so that we would know where we were at and he so remained for a week there in constant charge of the bank. Meantime, however, I was getting daily reports of the bank and also its operation, having arranged previously with Mr. McMahon that until we could ratify or disaffirm this contract that I would like to be in a position to know what the bank was doing daily, and so these reports were coming to us, and no loans were made unless it was with our consent. The following Monday the meeting was had and we de-

manded Mr. McMahon's resignation as president of the bank. Now Mr. Reilly, who had this contract, I visited him on the Saturday following. The appointment was for Saturday morning in New York in pursuance of an arrangement, and I found that he was a lawyer, had a small room in the building on 42nd street opposite the library, and he did not keep the appointment, a young lady was there that told me she had not been paid her salary for over six weeks and that Mr. Reilly was just recently dispossessed from a building downtown. All he had in his office was a desk and chair and desk and chair for the girl. Didn't have a telephone or even a typewriter. We then engaged a lawyer by the name of O'Connor to see what this man Reilly is going to do about the contract, because he had a definite contract, and fortunately it provided that a payment was to be made of $50,000 on the first of August. On the 15th of August, rather, and we got Mr. McMahon out and put Mr. Mandur who was the former owner of that bank and also the former president of the bank, in charge of the bank without compensation. He volunteered to continue in the office there and watch the bank until we decided what to do. In the meantime we had hoped that Mr. Reilly may come through in some way or shape, but the department wouldn't wait. They wanted either that the then existing deficiency in the surplus should be made up—and the deficiency really in fact existed by reason of bad loans, bad investments—or that the bank be closed. Mr. Reeves was friendly to us and he thought that if a fifty thousand or hundred thousand was at once put into the bank that the department would permit us to continue the bank—continue to operate the

bank, but providing McMahon was out. That Saturday night I took a train, or, rather, Sunday night I took a train to Washington and went to see Mr. Sterns, Wally Sterns, then deputy treasurer in charge of banking in this district, with the result of that conference it was agreed that if we would put up fifty thousand dollars, the receivers, and if I could raise another twenty-five thousand from other stockholders, that the bank will be permitted to continue for a period of one month to give us a chance to work out our problem. I came back and reported the matter to the Vice-Chancellor and advised with him on it, and he told me to go and do what I could that would be for the best interests of the bank, to keep the bank open. So finally that night we did agree and put up sixty thousand dollars, fifty thousand dollars we put up and ten thousand a man by the name of Richman put up—he is a stockholder—and subsequently we presented an order to this Court ratifying this payment of money and the bank was kept open, and it so continued to be kept open and we were trying to sell it, and meantime, however, we were in charge, and in fact, running the bank. Suddenly we learned that Mr. Mantour instead of keeping his promise not to charge us any salary—he got tired—for two months he did not draw any salary, but after that he drew a salary of some ten thousand dollars—at the rate of ten thousand dollars a year. This developed in a statement of comparison of earnings which was very apparent in that bank, a thousand dollars a month, or, rather, eight hundred and eighty-eight dollars a month, made a big hole in that bank. And then we had our difficulty with Mr. Mantour. We didn't need a ten thousand dollar man there at

all. Mr. Griffith, who was the treasurer there or vice president, was capable of watching that bank and capable of running it. Finally we held another meeting with Mr. Reeves resulting—and the directors—that Mr. Mantour was requested to resign, and we had, in order to accomplish this, to threaten him with a suit to recover the money that he unlawfully withdrew from the bank without power from the board of directors, and then Mr. Mantour left. In the meantime we procured—we had any number of offers on this bank—for this bank, but none materialized until there was an offer made by a Mr.— I forget his name—Feldman, at a hundred and fifteen dollars a share, and although we thought that the price was a very nominal one, we submitted the matter to the court and the papers are here in court and finally that bank was sold to a man by the name of Mr. Goldring for a hundred and twenty-five dollars a share, who backed out, and afterwards we again resold it to Mr. Mantour, the original owner of that bank at approximately a hundred and five dollars a share or a hundred and ten dollars a share. The record is here in court and will speak for itself.

Q Did you have any trouble and litigation with about his purchase before you resold it? A Yes, sir; it was all a matter of litigation.

Q Litigation in this court? A Yes, sir, time and time—(interrupted).

Q You attended the various meetings? A Yes, sir.

Q Many conferences? A Every day we were here, this court and receivers and counsel were running banks and buying and selling stock. We were constantly in business. The Court was

advised of every move and we were here daily. I was ashamed to come here.

Q Spend any time with Goldring and his counsel at your office or your bank? A We spent days and days with that matter.

Q Did Mr. LaVecchia join in those conferences? A "We," I said, "we."

Q All right. A Meantime and until this bank was sold we operated the bank from my own offices. I was constantly in full charge of it. I visited the banks and attended the meetings of the board and executive committee. Had it not been for our efforts in this matter, together with the Court's, that bank would not have been in existence one week after we were appointed receivers, and that bank had no justification for existence at the time. I am glad to say now that the bank is in good hands, because the man has put his own money in it and watching the bank.

Q Are you free, Mr. Stamler, to state the condition of the Perth Amboy National Bank at that time, at the time of your appointment? A It is a matter of record in this court. The bank there was not as bad as the Lebanon, but it was in very bad shape, due to lack of supervision. Due to lack of supervision. The officers of the New Jersey Bankers owned the stock—owned the control, did not supervise the ownership of the bank at all. They simply permitted the people in charge to operate without themselves supervising which is a very important matter in banking. That bank was in very bad shape. A letter came from the Department of Currency, which is part of the record in this case, threatening to close that bank. I petitioned the court for permission to sell this bank at private sale to a

group of directors and others who live in Perth Amboy, notwithstanding the fact that there was also an option outstanding there at $250 a share. The Court refused to assume that responsibility, to permit that bank to be sold at private sale, and directed us to sell it at public sale. The reason we were fearful of a public sale was that there would be a run on the bank and that there would be nothing left. However, the Court's judgment was better than ours. The purchasers who submitted to us the offer for this bank were responsible men in Perth Amboy and the public in Perth Amboy were pleased with having such men own the bank in Perth Amboy and there was no run and that bank was sold at $150 a share. Between that time, however, we also were watching that bank. We were getting daily reports of the condition of that bank—a daily statement sheet and those who are bankers know what that is; shows the exact transactions each day so we know how the condition of the bank changes from day to day.

Q Were you personally in attendance at any time at either of these two banks, Lebanon of New York or Perth Amboy? A Oh, yes, any number of times; met with the boards and set in with them any number of times. In some instances, beginning at Perth Amboy I did not go with—but Mr. Jelin attended for me and at my direction he was attending meetings of the board of directors, of the executive committee meetings and reported to me the record of each meeting, but after Mr. Jelin was through, we didn't have any further use for his services, which was about five weeks, I personally agreed to take charge of that part of the work and I attended those meetings and met with the board.

Q Where were the officers of the defendant company at the time of your appointment? Where was the place of business of the defendant company? A At the time it was in Jersey City, and it was very inconvenient for your receivers to operate the company from Jersey City, so we directed to have it moved over to Newark and we requested Mr. Jelin to take charge of that work for us. He knew the whole detail of this company and we wanted him to guide us along until we could take up the loose ends and continue the operation of the company, no matter which way it may turn out.

Q Which of the receivers took charge of the office in Newark? A Mr. LaVecchia took charge of that. I don't think that I was in that office three times since I was appointed receiver.

Q And Mr. LaVecchia's charge of the Newark office has been continuous from last July down to the present time? A Yes, sir.

Q He has had charge of the help and operation of the place? A Yes, sir.

Q Now what other services did you render in a general way? I know you cannot give us all the details. A Just touching the high spots on all these things. We had numerous—I will say twenty various different propositions submitted to us as receivers for the purpose of considering a consolidation or merger of the assets of the New Jersey Bankers with other corporations. Many of those conferences I had with Mr. Weinberger, others I had with—almost every lawyer in Newark was in some way interested in getting hold of this fund, with a result that never up to the present time was one offer submitted that looked to us that we could recommend it to the Court or to the stockholders. There

is one here, a recent one which is perhaps—which may have some merit—had some merit, but in view of the unusual break in the market that occurred since the date that the Court decided this case and the present day, which I think it was a most wonderful thing that we did not even go into the consideration of it, because most likely we might have recommended that to the great loss and detriment of the stockholders.

Q To sit down and in detail to describe the work done by you receivers would take a great deal of time. It can be best analyzed from the records of this court and from the personal knowledge that the Court has in this matter.

A Another matter which gave us a great deal of trouble and work and annoyance, the famous lawsuit of Mr. Weinberger against the receiver—this receiver, and Mr. Winston against the receiver. If I were not the receiver in this case I would not have been sued. Suit involving one, for $3,000,000, another one for $3,000,000. These took days of time. Some people worried about it. Naturally a lawsuit of $3,000,000 you have to defend whether you worry about it or not, but it did take time. I ran to Trenton—appeared there two or three times. I filed answer—interrogatories and filed answers and had lawyers and all this great how do you do over nothing, but meantime it required our attention—required our attention, and our counsel were sued in the same manner.

The Court: I am not allowing anything for that.

The Witness: Not damages, but just time.

The Court: I am not allowing anything for the time for defending yourself.

The Witness: It was receiver's work to defend myself.

The Court: No. It is receiver's work to defend the estate, not himself.

Q Mr. Stamler, were you in attendance in this court on the return of the various orders that were granted, orders served upon stockholders and creditors? A I was here, but not all the time. I was here many, many times, but I was not here on all occasions. I would come in for a little while and leave. I didn't think that my time was required here.

Q Were you in attendance during the litigation with Kelough Bremhall Company of New York in relation to the shares of the Bank of Manhattan? A Yes, sir; I was. My attention was necessary and I was here.

Q Was any work done by you outside of the court room in conferences with others? A Yes, sir; this is all a matter of record in this court. The testimony has been taken and it is a matter of record in this court.

The Court: Where is it?

Mr. Ruback: I am going to offer the testimony when I take the stand.

The Court: You better tell us about it. What happened in that case? What did the receivers do?

The Witness: The receivers subject to the order of the Court made a sale of a hundred shares of the Bank of Manhattan at a certain fixed price, I think $930 a share. We were unable to get the money or the stock.

We sent the stock over to get our money and we didn't have the stock nor the money. The receivers got somewhat worried about it and finally secured the stock and counsel—as we had another contract—in the meantime there was a fluctuation of this stock, running up to a thousand dollars more than we had sold it for and litigation occurred—was started against us to return this stock, and we, however, wanted more money for it and this litigation resulted that we got our money back, $93,000.

The Court: Do not tell the story.

The Witness: While this litigation was pending the market broke and the stock went down to $500 a share which showed a loss of $43,000 and the result of this suit we started we got the full ninety-three. We were in court here I don't know how many days on the matter; conference after conference, in order to get this thing adjusted.

Q Did you conduct any investigation, Mr. Stamler, pertaining to the assets of this estate? A Yes, sir; the receiver took testimony on nine different days.

The Court: We have a record of it, haven't we?

The Witness: Yes, sir. In order to get that record together it required some information and investigation that led up to the taking of this testimony.

Q Was there any examination of Mr. Weinberger conducted by you or rather, conducted in your presence? A Yes, sir, the receivers,

through our counsel, took testimony of Mr. Weinberger, I think one afternoon.

Q Officially? A Yes, sir.

Q You had many conferences with Mr. Weinberger. A Yes, sir; hundreds of them—hundreds of them.

Q To what extent? A Consolidations, mergers, settlements, disputes of all sorts in connection with the management of the estate. Sometimes these were honest and other times these were dishonest. Sometimes he came to us in a mood of honesty and others in a mood that we were dishonest, and were trying to hurt him and disrupt him. We always were very indulgent and felt sorry for him and his attitude.

Q Have you been away on any trips since July, 1929?

The Court: Why?

Mr. Ruback: I want to show the continuity of service.

The Court: Vacation?

Q Has your service been interrupted by any extended stay-away? A Not more than two days at a time. I might state this, and that may be of some value to the Court, that since I became receiver I have not attended any meetings of the Elizabeth Trust Company of which I am vice president, Elmora State Bank or Citizens National Bank of Rahway, due to the fact that I had no time. I gave that work up entirely and devoted my time to this work.

Q Were you ever called upon to devote any evening hours to the estate? A Time and time again; Sundays and evenings, Weinberger and everyone else coming night and day, for the pur-

pose of final hearing in this matter I would like to have an opportunity, both of us, Mr. LaVecchia and I, to file a complete and full report of all detail work done. We are doing this hastily now in order to just pass on the high spots in the matter.

Q What you have given us is only a very sketchy outline of the services? A That is all.

Cross examination by Mr. Glauberman.

Q Mr. Stamler, you testified that $67,000 worth of income—(interrupted). A Yes, sir.

Q Those items consist of what? A Interest earned and dividends received on stock; chiefly, however, interest earned.

Q Any moneys there resulting from any suit brought by the receiver in behalf of the New Jersey Bankers? A The only one we had was that one lawsuit with reference to the hundred shares of stock of the Manhattan Trust Company.

Q In other words the $67,000 are income that came in regularly to the office of the New Jersey Bankers from stocks and bonds held by it. A No, through investments that your receivers made with the advice and consent of the Court.

Q Investments in county bonds, municipal bonds and certificates of deposit? A Yes, sir; that is right.

Q How many clerks have you in the office of the New Jersey Bankers? A Two.

Q They take charge of all that? A They don't have anything to do with that except to keep the books.

Q Miss Matey? A Miss Matey and Miss Butler.

Q How much does Miss Matey get a week? A My recollection is $67.50.

Q How much does Miss Butler? A I think $60 a week.

Q Now, the Hobart Bank was sold right after you became receiver, is that correct? A About two weeks after.

Q Two weeks after you became receiver. How many days did you spend on that sale? A Every day from the day I was appointed.

Q Will you say from July 25th to August 8th every day? A Part of the time. I don't mean that I gave every day all the time of that day, but every day something, in this matter, excepting the day when I was in Washington. During that same period I was one day in Washington.

Q What would you say the total time was spent by you on the Hobart sale? A You mean by hours?

Q By hours, yes. A I don't know.

Q In days, how many full days would you say? A I do not know. I say I gave—(interrupted).

Q Ten days, fifteen days? A I say I gave some part of every day to the services of the Hobart or the New Jersey Bankers, and a substantial part of my day.

Q Pardon me, Mr. Stamler, I am now confining your attention to the sale of the Hobart and I ask you how many hours or days did you spend on that? A I have no record, nor can I tell.

Q The Hobart was sold to a group of bankers in Passaic who originally had bid twenty dollars a share, is that correct? A Correct.

Q It was sold for fourteen dollars a share by the order of this Court? A Yes.

Q How many days did you spend on the Perth Amboy case?

The Court: Working days or worrying days?

Mr. Glauberman: Working days.

The Court: When I say "worrying" I mean anxious.

Q How many days did you spend on the Perth Amboy case? A I would say two weeks after I was appointed daily until the bank was actually sold and money in the pocket of the bankers.

Q How many days was that, do you know? A That was months.

Q You mean constantly? A I say every day; every day, yes, sir. Every day and every evening of the day.

Q You are the president of what bank? A New Jersey National.

Q Did you attend the office of the New Jersey National daily? A Yes, sir.

Q Since your appointment as receiver? A Yes, sir; oh, missed many a day, though, from my bank. Prior to the appointment of the receiver I quit at three o'clock and got there at nine. When I was appointed receiver I was at my bank eight o'clock in the morning and stayed until six and seven o'clock at night, and am doing it up until now.

Adjourned until next Tuesday.

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New Jersey State Library

New Jersey Court of Errors and Appeals.

On Bill, Etc.

On Appeals from Orders in Chancery.

BETWEEN

SOLOMON BERNSTEIN,
Complainant-Respondent,

and

NEW JERSEY BANKERS SECURITIES CO., a corporation,
Defendant-Appellant.

Stipulation of Facts Supplemental to State of Case.

In order to obviate the need of enlarging the record on appeal by approximately 1500 pages of additional printed matter and consisting of the following:

(1) The testimony of Harry H. Weinberger as president of the New Jersey Bankers Securities Co. and of his associate officers and directors, given before the Legislative Investigating Committee known as the Davis Committee,

(2) The record in the case of Mayer v. New Jersey Bankers Securities Co.,

(3) The record of the proofs and proceedings in the case of Bernstein v. New

Jersey Bankers Securities Co. (Suit No. 1), involving a proposed transaction between the defendant company and the Equitable Financial Corporation of New York,

(4) The books of account of the defendant company,

(5) The minute book of the defendant company,

(6) Numerous petitions, orders and transcripts of testimony taken before Vice Chancellor Backes with relation to the sale by the Receivers of the defendant company's holdings in the Hobart Service Trust Company, Perth Amboy National Bank and Lebanon National Bank of New York;

and for the purpose of saving the expense involved in printing the above-enumerated items, the solicitors for the appellants do hereby stipulate and admit as follows:

1. That all statements of fact contained in respondent's brief (filed in this cause at the October, 1930, Term of the Court of Errors and Appeals) as to who were the incorporators of the defendant company, and its directors and officers from the time of its incorporation to the date of the filing of the bill of complaint in this cause, the resignations of the directors and officers and the dates thereof, the election of other or additional directors and the dates of such election, all resolutions and other corporate action taken by the Board of Directors of the defendant company and/or Executive Committee of said

Board and/or its officers, are supported by the minute book, Exhibit C--3 in this cause. All resolutions and other excerpts from the company's minute book, quoted in respondent's brief, are correctly set forth. All references in said brief to the minute book and the by-laws of the company contained therein are correct.

2. The Davis Committee constituted by the Legislature of the State of New Jersey investigated the business operations of the defendant company, which investigation resulted in certain disclosures. Thereupon, a bill was filed in the Court of Chancery of New Jersey in the name of Fannie Mayer, a stockholder of the defendant company, against the said company and its officers and directors. Respondent's said brief (pp. 20 to 21) accurately sets forth the nature of the Mayer suit, the charges made in her bill and the relief sought. The said suit resulted in the Weinberger settlement, set forth in said respondent's brief. The litigation was closed by an order of the Chancellor, entered upon the advice of Vice Chancellor Backes. That order is correctly set forth on page 7 of appellant's brief.

3. The non-payment of the Weinberger note of $2,300,000 either in principal or interest and the disposition of some of the items of collateral securing said note are correctly set forth in respondent's brief.

4. The proceedings had in the Court of Chancery of New Jersey and in the Court of Errors and Appeals of New Jersey in the case of Bernstein v. New Jersey Bankers Securities

Co. (Suit No. 1), involving the agreement made by the defendant company to turn its assets over to the Equitable Financial Corporation of New York are correctly stated in respondent's brief, so far as complainant's bill is concerned and the various proceedings had before Vice Chancellor Backes and the termination of such proceedings. Notwithstanding the foregoing admission, respondent may print such portions of that record as may be deemed necessary.

5. Nothing in this stipulation contained shall operate to prevent the respondent from printing any of the omitted exhibits, should respondent or the Court desire that same be done.

6. Appellants in no way admit the competency, admissibility or materiality of the above-mentioned exhibits and facts, nor that they are properly a part of the state of the case on the orders appealed from.

Dated, February 2nd, 1931.

LICHTENSTEIN, SCHWARTZ & FRIEDENBERG,
Of Counsel with Defendant-Appellant.

PLATOFF, SAPERSTEIN & PLATOFF,
Of Counsel with Stockholder-Appellant Harry Ginsberg.

LEBER & RUBACK,
Of Counsel with Respondent.

Bill of Complaint.

(Filed Apr. 1, 1929.)

IN CHANCERY OF NEW JERSEY.

To His Honor, EDWIN ROBERT WALKER, Chancellor of the State of New Jersey:

Complainant SOLOMON BERNSTEIN, residing in the City of Newark, County of Essex and State of New Jersey, filing this bill in behalf of himself and such other stockholders of the New Jersey Bankers Securities Co. as may hereafter intervene and contribute to the costs of this suit, says that:

1. He is the holder and owner of 61¾ shares of the common capital stock of the defendant, New Jersey Bankers Securities Co., a corporation organized and existing under and by virtue of the laws of the State of New Jersey, having and maintaining its principal office in the City of Newark in said State. Complainant acquired said shares of stock on December 11, 1928, and has ever since been the owner thereof.

2. The defendant, New Jersey Bankers Securities Co. was organized under the General Corporation Act of the State of New Jersey on August 19, 1927, and by its certificate of incorporation was authorized to engage in the business of buying, holding, selling and dealing with shares of stock of other corporations and other corporate securities and has been engaged in such business since its incorporation.

3. Its authorized capital stock is 2,000,000 shares of common stock, of no par value, of which

there have been issued and are outstanding at the present time 642,639 shares, all of which are fully paid and non-assessable. Said shares are widely distributed and are held and owned by a great number of persons both within and without the State of New Jersey.

4. Complainant is reliably informed and charges the fact to be that the stockholders of said defendant company are approximately 15,000 in number.

5. The affairs and business of said defendant corporation are managed by a board of ten directors who are as follows:

Edward I. Edwards
Abraham Jelin
Bernard L. Stafford
John J. Roegner
Dr. Robert R. Armstrong
William A. Evans
Stewart C. Ross
John T. McCormick
George Morrissey
Charles Veghte

The President of said company is Edward I. Edwards and the Vice-President and General Manager is Abraham Jelin. Said company is managed from its main office in the Military Park Building, 60 Park Place, in said City of Newark, at which office the said Abraham Jelin is in daily attendance, he being thoroughly and efficiently acquainted with the affairs of said company and with its business interests and requirements.

6. The net assets of said defendant company amount to approximately $5,000,000. Complainant is informed and charges the fact to be that in the month of February, 1929, an audit of the books and securities of said company, made by Price, Waterhouse & Co., a leading and reliable firm of accountants in the City of New York, disclosed that the net assets of said company amounted to $4,832,875.59, represented almost entirely by cash at hand, notes receivable, accounts receivable and investments in bank stocks. The last mentioned investment item, viz. bank stocks, amounted to $4,278,293.07. The gross assets of said company consist of approximately $9,000,000, that figure being inclusive of an item of $2,375,000 being an account due and owing from one Harry Weinberger, which account receivable is, according to complainant's knowledge and belief, collaterally secured by the deposit of divers shares of corporate stock and divers mortgages encumbering real estate. The only assets of said company not consisting of bank stock, notes receivable, accounts receivable and shares in other corporations are two items, one of furniture and fixtures, amounting to $7,643.06, and one of prepaid premium on a Fidelity bond amounting to $640. The organization expenses of the company, amounting to $157,017.06, are exhibited on said audit as an asset contributing and going into the gross asset figure of $8,792,513.69, but on said audit said last mentioned item of organization expenses was written off and eliminated as an adjustment to book balances and is not included in the net assets amounting to $4,832,875.59.

7. The Equitable Financial Corporation is a New York corporation with an authorized capital

stock of 500,000 shares, of which 250,000 shares are Common Class A non-voting stock, having a par value of $20.00 per share, of which 101,423 shares of a total par value of $2,028,460 are issued and outstanding; and 250,000 shares of Common Class B voting stock of no par value, all of which Class B stock is issued and outstanding. Complainant is informed and verily believes and charges the fact to be that said Class B voting stock was purchased and acquired by the holder or holders thereof for the sum of $50,000, and that 90% of said Class B stock is held by one person, Mr. Harold Spielberg, of New York, who is the President of said Equitable Financial Corporation, and that by reason of said stockholding of said Class B voting stock, the said Harold Spielberg is in full and complete control of said company, the election of its directors and officers, and the management of its business, affairs and transactions.

8. Complainant says that the gross assets of said Equitable Financial Corporation, as determined by an audit made as of January 31, 1929, by the aforenamed Price, Waterhouse & Co., amount, according to the books of said company to $2,388,185.78, which assets have, however, been figured on some basis of adjustment so as to appear on said audit to amount to $3,729,427.50. Complainant is informed and charges the fact to be that the gross assets of said Equitable Financial Corporation do not in true value exceed the first named sum of $2,388,185.78, and that many of the items contributing to such aggregate figure of gross assets are of doubtful value and of such character as to have no ready market for the sale thereof.

9. Attached hereto and marked "Exhibit A" is a true copy of the audit made by said Price, Waterhouse & Co. of said New Jersey Bankers Securities Co. and said Equitable Financial Corporation, which audit was made for the purpose of the proposed transaction hereinafter related. Said audit consists of a letter of explanation addressed to "Mr. Harold Spielberg, Equitable Financial Corporation" and to "Mr. Harry Weinberger, New Jersey Bankers Securities Co.," to which letter are attached two exhibits, viz. "Exhibit A," showing the assets and liabilities of the New Jersey Bankers Securities Co., and "Exhibit B," showing the assets and liabilities of the Equitable Financial Corporation. Complainant refers to said attached audit as fully as though here repeated at length and says that although said audits are made as of January 31, 1929, the affairs and conditions of said companies, respectively, are at the present time substantially as they were on January 31, 1929.

10. On or about the 20th day of March, 1929, the officers of said New Jersey Bankers Securities Co., over the objection of three directors of said company, viz. Messrs. Abraham Jelin, William V. Evans and Charles B. Veghte, entered into written articles of agreement in the name and in behalf of said New Jersey Bankers Securities Co. with the officers of said Equitable Financial Corporation, wherein the said New Jersey Bankers Securities Co. did agree to sell unto the said Equitable Financial Corporation the assets, properties and effects of the former, shown in "Schedule A" attached to said articles of agreement, subject to the liabilities of the former, set forth

in "Schedule B" attached to said articles of agreement, being all the assets and liabilities set forth in the aforementioned audit of Price, Waterhouse & Co. For the conveyance of said assets, properties and effects the said Equitable Financial Corporation agreed to pay 152,349 shares of the full paid non-assessable Class A capital stock of said purchasing company, being non-voting stock, and in addition thereto one share of said stock for each four shares of stock of the New Jersey Bankers Securities Co., heretofore subscribed for and hereafter issued upon either the payment of the balance of the subscription price or the commutation of the subscription contract, and in addition thereto an option to the selling company until March 20, 1930, for the purchase of all or any part of 8,310 shares of said Class A non-voting capital stock of said Equitable Financial Corporation at $34.00, in cash, per share.

11. Said agreement was by its terms made subject to certain specified conditions, amongst which was the following:

> "The approval of this contract by a majority of the whole Board of Directors of the party of the second part (New Jersey Bankers Securities Co.) and the consent to the same in writing by the holders of a majority of its capital stock issued and outstanding as required by its charter and, if required by the party of the first part (Equitable Financial Corporation), the holders of 16 2/3% of the shares of stock of the party of the second part issued and outstanding in addition to said majority."

12. Said articles of agreement provide that immediately upon the purchasing company acquiring the possession of the assets, properties and effects of the selling corporation, it will elect to its board of directors four persons to be selected from the membership of the board of directors of the selling corporation, and the purchasing corporation would, at the same time, cause a majority of its Class B stock to be deposited under a voting trust agreement in the hands of six voting trustees, three of whom were to be named by the purchasing corporation and three by the selling corporation, which voting trust agreement would continue for a period of three years and would provide that during those three years the voting trustees would vote for the said four directors and that in case of the death, resignation or disqualification of any of said four directors, the successors would be selected by the voting trustees from the directors of the New Jersey Bankers Securities Co. now in office. Under said voting trust agreement the voting trustees are to have no power except to vote for the election of directors.

(a) Said articles of agreement were executed in behalf of Equitable Financial Corporation by Harold Spielberg, its President, and Lester E. Bachner, its Secretary. A true copy of said articles of agreement is hereto annexed, marked "Exhibit B" and made part hereof as fully as though here repeated at length.

13. The said articles of agreement were, on or about the 20th day of March, 1929, approved by a majority of the directors constituting the Board of Directors of the defendant, New Jersey Bankers

Securities Co. Such approval was given at a meeting of said Board held at the office of said company, at which meeting three of the ten directors constituting said Board, viz. Messrs. Abraham Jelin, William V. Evans and Charles B. Veghte, did oppose the approval and confirmation of said agreement and did insist that the same was unfair to the stockholders of said New Jersey Bankers Securities Co. and would constitute an inequitable, ultra illegal and illegal disposition of the company's assets and properties, to the great detriment and injury of its stockholders. Notwithstanding such objections, the said Board, by a majority vote, approved said agreement and resolved to submit the same to the stockholders for their approval.

14. Thereafter, on or about the 21st day of March, 1929, the President of said company, Edward I. Edwards, acting in his official capacity and by the order and direction of the majority members of said Board who had voted in favor of said agreement, caused to be issued over his signature and mailed to each stockholder a letter urging the approval of said articles of agreement, and soliciting the stockholders to send in their proxies for a meeting called and to be held on April 5, 1929, at 11 o'clock in the forenoon, a true copy of which letter is hereto annexed and marked "Exhibit C". Thereafter on March 25, 1929, the aforenamed Abraham Jelin, William V. Evans and Charles B. Veghte did cause to be issued over their signatures and mailed to each stockholder of said New Jersey Bankers Securities Co. a letter whereof the following is a true copy:

"NEW JERSEY BANKERS SECURITIES CO.
Military Park Building
Newark, New Jersey

Telephone 10300 Mitchell

Edward I. Edwards
President

Abraham Jelin
Vice-President and
General Manager

March 25th, 1929.

To the Stockholders of the New Jersey Bankers Securities Co.

Dear Sir or Madam:

We, the undersigned, Directors of your Company, refer to a letter of President Edward I. Edwards advising you of a proposed sale of the assets of your Company to the Equitable Financial Corporation of New York and enclosing for your signature, a proxy to vote at 11 o'clock on April 5th next in favor of the sale.

As directors representing you, and for the best interests of your Company, WE VOTED AGAINST THIS PROPOSED SALE, and submit for your consideration our reasons for so doing:—

First: It is proposed to sell the assets of your Company to this New York corporation NOT FOR CASH but STOCK HAVING NO VOTING POWER. Your VOTING stock consists of upwards of 642,639

shares held by approximately *15,000* stockholders. THEIR CLASS B VOTING STOCK consists of 250,000 shares, 90% of which is held by ONE MAN, Harold Spielberg of New York for which we understand $50,000.00 was paid.

Second: The basis of exchange is FOUR shares of your VOTING stock for ONE share of their NON-VOTING STOCK. OUR assets are conservatively valued at upwards of *$5,000,000.00* and THEIR assets at upwards of *$3,000,000.00*. Under the plan of exchange, our stockholders will receive 152,349 shares of NON-VOTING stock. We contend that we should receive at least 229,515 shares. This difference shows a loss in value to our stockholders of upwards of $1,500,000.00.

Third: You now, by reason of holding voting stock control the Boar dof Directors of your Company. Under the proposed plan, by reason of a voting trust agreement, only FOUR directors of your Company will be included in the twelve or more directors of their Company. This will give you at best, an insignificant MINORITY representation.

We urge you to carefully consider the above objections. Submit them to your bank, or lawyer. If you agree with us, and do not approve of this proposed sale, do not sign the proxy which was enclosed with President Edwards' letter. If you have already signed it and sent in the proxy, CAN-

CEL it and REVOKE it, or ATTEND THE MEETING IN PERSON.

Very truly yours,

ABRAHAM JELIN,
WILLIAM V. EVANS,
CHARLES B. VEGHTE."

15. Complainant charges the fact to be that the said proposed transaction of sale and purchase of the assets of the said New Jersey Bankers Securities Co. is in truth and in essence a proposed merger between the New Jersey Bankers Securities Co., a New Jersey corporation, and Equitable Financial Corporation, a New York corporation, and that such merger is without legal warrant and legally incapable of execution; that because of the legal barriers and disabilities standing in the way of the effectuation of such merger, the said agreement was devised and designed as a subterfuge and as a means to circumvent the statute in such case made and provided; that the provision in subdivision (b) of Paragraph 3 of said articles of agreement providing for the approval of said contract by 16 2/3% of the shares of stock of said New Jersey Bankers Securities Co., in addition to the approval by a majority of such shares, was intended as an indirect means of satisfying the requirement of law pertaining to mergers that a proposed merger be approved by at least 66 2/3% of the outstanding shares of stock of each merging corporation, that the assets proposed to be conveyed to the Equitable Financial Corporation are substantially all the assets of said New Jersey Bankers Securities Co., and that the liabilities assumed by said Equitable Financial Corporation

are in fact all the liabilities of said New Jersey Bankers Securities Co., and that the said transaction of sale and purchase is but a guise for what, if consummated, would in fact be a merger between the two corporations.

16. Complainant says that the said transaction viewed either as one of sale and purchase or, in the alternative, as a projected merger, is unfair and inequitable and injurious to the interests of the stockholders of the said New Jersey Bankers Securities Co., in that:

(a) The basis of exchange is not fairly proportionate to the contribution of assets, and that on any fair basis the stockholders of the New Jersey Bankers Securities Co. should receive no less than 229,515 shares of the purchasing corporation as against the 152,349 shares proposed to be paid, whereby said stockholders are deprived of property and value in a sum upwards of $1,500,000.

(b) The stockholders of said New Jersey Bankers Securities Co. will, if said plan be executed, receive for their voting stock shares of stock that have and will possess no voting powers or properties and will thereby be deprived of the right to participate in all matters and things concerning their property and will be wholly subject to the dominion of the Class B voting stock of said Equitable Financial Corporation held almost entirely by the aforenamed Harold Spielberg.

(c) The earnings of said Equitable Financial Corporation are attributable and, by way of dividends, payable to the holders of both Class A and Class B of its common capital stock, in consequence whereof the earning power of the shares of stock

of said Equitable Financial Corporation which will come to the said stockholders of said New Jersey Bankers Securities Co. will be cut and reduced by approximately one-half, thereby reducing and impairing the fair value which the shares of stock agreed to be paid to the New Jersey Bankers Securities Co. might otherwise have.

17. Complainant says that if the stockholders of said New Jersey Bankers Securities Co., holding a majority of the shares of said company approve the said transaction, the said company and such of its officers and directors as are made defendants to this suit, intend forthwith to perform and fully to execute the same, and intend forthwith to deliver to the Equitable Financial Corporation all the assets, properties, securities, moneys and effects of said New Jersey Bankers Securities Co., and that such intention and purpose, if carried out, will oppress this complainant and deprive him of property and subject him to loss and damage.

Complainant, being without adequate remedy at law, prays as follows:

1. That New Jersey Bankers Securities Co., a corporation, Edward I. Edwards, Bernard L. Stafford, John J. Roegner, Dr. Robert R. Armstrong, Stewart C. Ross, John T. McCormick and George Morrissey, who are the defendants to this suit, may answer this bill of complaint and each statement therein made.

2. That the said defendants, and each of them, be restrained and enjoined from conducting the stockholders meeting called for 11 o'clock in the morning of April 5, 1929, for the purpose of approving the said articles of agreement, and that

they and each of them be restrained and enjoined from in anywise performing or carrying out the said articles of agreement or any part or provision thereof, and from assigning, transferring, conveying or setting over unto the Equitable Financial Corporation, a New York corporation, or to any person, firm or corporation acting in behalf of said Equitable Financial Corporation, any of the moneys, securities, assets, properties or effects of said New Jersey Bankers Securities Co., and from in any way or by any means, directly or indirectly doing any of the foregoing.

3. That pending this suit, the defendants and each of them, their servants, agents and representatives, be restrained and enjoined in the manner above prayed.

4. That a writ of subpoena may issue commanding said defendants and each of them to answer this bill of complaint and to abide by such order or decree as may be made herein.

5. That complainant may have such other and further relief as the nature of the case may require and as shall be agreeable to equity and good conscience.

LEBER & RUBACK,
Solicitors for and of Counsel
with Complainant.

EXHIBIT A.

PRICE, WATERHOUSE & CO.

56 Pine Street,
New York, February 15, 1929.

Mr. Harold Spielberg,
Equitable Financial Corporation,

Mr. Harry Weinberger,
New Jersey Bankers Securities Company

Dear Sirs:

We have now completed our examination of the books and accounts of the Equitable Financial Corporation and New Jersey Bankers Securities Company as at January 31, 1929, and submit our report incorporating suggestions relative to a basis for exchanging the capital stocks of the two companies; we have prepared the accompanying statements for the purpose of setting forth a basis for valuing the outstanding capital stocks as of January 31, 1929, and calculating market value of the securities owned by the two companies as at that date.

In preparing this report we have been guided by our understanding of the transaction which it is proposed to consummate prior to making an exchange of stock, to wit:

(1) The amendment of certificate of incorporation of Equitable Financial Corporation to provide for an increase in the value of liquidation of the Class A stock to $40.00 per share before any assets become distributable to holders of Class B stock

(2) Ratification of a proposal to cancel notes receivable from subscribers ($17,-

875.00), and 1,500 shares of capital stock now outstanding, the balance of $5,000.00 paid in by the subscribers to be set up on the books of New Jersey Bankers Securities Company to their credit.

(3) The proposal to cancel the balances due from subscribers to the capital stock (not yet issued) of the New Jersey Bankers Securities Company and to set up on the books of the company the amounts paid in to their credit; this liability to the subscribers would then be liquidated by the issuance of Class A capital stock of the Equitable company. In this connection it might be mentioned that the New Jersey company has offered to its subscribers three alternative plans for continuing payments on their subscriptions, and at this date it would be impossible to ascertain (1) the collectibility of the unpaid balances shown on the books, (2) the extent to which each of the three plans already offered will be accepted by the subscribers, or (3) whether or not the subscribers will be receptive to this new proposed plan.

The first two statements attached have been drawn up so as to show the balances of the several asset, liability and capital accounts appearing on the books of the two companies as at January 31, 1929. The adjustments of these balances which might be necessary to ascertain the value of the outstanding capital stocks of the two companies are also set forth on the statements together with the resulting adjusted figures. In explanation of these adjustments, we offer the following comments:

New Jersey Bankers Securities Company (Exhibit I):

A and B give effect to the cancellation of the unpaid balances due from stockholders and subscribers, the cancellation of the capital liability for 1,500 shares of stock now outstanding and set up as a liability to the subscribers and stockholders the amount which has been paid in to the company by them.

C and D write off two assets of doubtful value for the present purpose.

E provides for the estimated liability for counsel fees as of January 31, 1929.

F reduces the book value of securities to bid prices. As indicated on the statement of securities owned, we have used three prices furnished by the company's accountants in respect of which no published quotations were available. It might also be mentioned that whether or not the bid price, the average of bid and asked prices (the securities valued on this basis are also shown on Exhibit III), or some other price would constitute a fair basis for valuing securities for the present purpose would appear to be a question of agreement between the officials of the two companies.

G provides for the possible liability arising from the lawsuit pending in respect of a contract for purchasing capital stock of the Journal Square National Bank. The present status of this matter was set forth in our letter of February 7th to you, and we might add that the company's attorneys have

advised us that if the judgment the company holds is not vacated, the company will recover not only the $50,000.00, but defeat the remainder of the claim; in any event, if the judgment were vacated, the $50,000.00 on deposit would be credited on the sum claimed.

Equitable Financial Corporation (Exhibit II):

A increases the book value of securities to their cost by transferring to surplus the realized profit on sales which had been credited to the asset account on the books.

B and C write off two assets of doubtful value for the present purpose.

D provides for Federal income taxes estimated to be payable on the profits of the company since organization.

E increases the value of stocks owned to bid prices prevailing at January 31st.

F indicates the approximate amount of the adjustment necessary if the unearned income on notes receivable were amortized over the life of the loans on the basis of the principal of the loans outstanding instead of being transferred to profits in equal monthly installments.

G provides for Federal income taxes on the increase in asset value resulting from the last two adjustments.

GENERAL

In the course of our examinations we have inspected or received confirmation of all stocks and notes shown on the books of the two companies

and have inquired into the value of the underlying collateral held against notes; it appears that the notes receivable by the New Jersey company from subscribers and Mr. Weinberger are not fully secured but, inasmuch as we have been instructed to treat the former as cancelled and the latter as fully collectible for the purposes of this report, we have made no provision for any loss which may be sustained.

Due to the fact that the subsidiary records containing the details of the balances due on subscriptions in the New Jersey company were not in agreement with the controlling account in the general books, we were unable to make a satisfactory test of the accuracy of these accounts in the time alloted; it is, moreover, doubtful whether any test short of a complete circularization of the debtors would furnish reliable information as to the collectibility of the amounts due. In cancelling these subscription amounts (vide adjustment B) we would point out the resulting credit to the subscribers ($336,835.67) represents the net amount of cash received by the corporation after deducting agents' commissions of more than $200,000.00 from the total amounts paid by the subcribers on the stock contracted for.

CONCLUSION.

The value of the capital stocks of the two companies if based on the figures shown on Exhibits I and II, would be as follows:

	New Jersey company	Equitable company
Value of Capital stock	$4,832,875.	$3,357,357
Number of shares outstanding	627,385½	101,771
Value per shares	7.70	32.98

These figures would indicate a basis for exchange of approximately 4¼ shares of New Jersey Bankers Securities Company for 1 Class A share of Equitable Financial Corporation.

Assuming that the officials of both companies accepted the average of bid and asked prices for valuing securities, and waived the possible liability on the lawsuit pending against the Jersey company, the figures would be as follows:

	New Jersey company	Equitable company
Value of capital stock as above	$4,832,875	$3,357,357
Additional amount due to:		
Increase in value of securities	256,872	67,521
Less—Federal tax (for Equitable company) waiver of liability for lawsuit	300,000	
	$5,389,747	$3,416,775
Number of shares outstanding	627,385½	101,771
Value per share	8.59	33.57

Based on these figures the basis for exchange would be approximately 3-9/10 shares of New Jersey Bankers Securities for 1 Class A share of Equitable Financial Corporation.

Yours very truly,

(Sgd.) PRICE, WATERHOUSE & CO.

EXHIBIT I

NEW JERSEY BANKERS SECURITIES CO.

Statement for the Purpose of Ascertaining the Value of Outstanding Capital Stock
As at January 31, 1929

Assets	Balance per the books	Adjustments to book balances	Adjustments of valuation	As adjusted
Cash	$208,074.15			$208,074.15
Investments in bank stocks	4,278,293.07		F$1,402,803.07	2,875,490.00
Deposit on Journal Square Bank stock	50,000.00			50,000.00
Notes receivable	9,000.00			9,000.00
Notes receivable from subscribers	17,875.00	A$17,875.00		
Accounts receivable from subscribers	1,631,205.67	B1,631,205.67		
Due from H. Weinberger	2,375,000.00			2,375,000.00
Sundry Accounts receivable, accrued interest, etc.	32,736.93			32,736.93
Allied Bankshares Co.	25,028.75	C25,028.75		
Furniture and fixtures, less reserves	7,643.06			7,643.06
Prepaid premium on fidelity bond	640.00			640.00
Organization expenses	157,017.06	D157,017.06		
	$8,792,513.69	$1,831,126.48	$1,402,803.07	$5,558,584.14
Liabilities				
Accounts payable	$23,872.88			$23,872.88
Provision for possible liabilities		E$60,000.00	G$300,000.00	$360,000.00
Capital stock subscriptions	1,968,041.34	B1,968,041.34		
		A5,000.00 }		
Amounts paid in by subscribers		B336,835.67 }		341,835.67
Capital stock, less deficit:				
Capital stock outstanding—628,885½ shares	7,509,477.51	A22,875.00	}	
Deficit	708,878.04	242,045.81	1,702,803.07 }	4,832,875.59
	$8,792,513.69	$1,831,126.48	$1,402,803.07	$5,558,584.14

A—Unpaid balances for 1,500 shares of capital stock issued to Directors treated as cancelled.
B—Subscriptions to capital stock treated as cancelled.
C—Doubtful account receivable written off.
D—Organization expenses written off.
E—Estimated liability for legal fees.
F—Depreciation of securities based on bid prices.
G—Possible liability on law suit pending.

EXHIBIT II

EQUITABLE FINANCIAL CORPORATION

Statement for the Purpose of Ascertaining the Value of Outstanding Capital Stock
As at January 31, 1929

	Balances per the books	Adjustment to book balances	Adjustment of valuation	As adjusted
Assets				
Cash	$13,830.75			$13,830.75
Investments in bank stocks	1,404,738.06	A$9,589.84	E$1,356,192.10	2,770,520.00
Investment in and advance to Equitable Realty Co.	180,000.00			180,000.00
Notes receivable	670,106.33			670,106.33
Due from H. Spielberg	55,159.18			55,159.18
Due from subscribers	6,000.00			6,000.00
Sundry accounts receivable, accrued interest, etc.	27,575.04	B1,052.33		26,522.71
Furniture and fixtures, less reserves	6,634.02			6,634.02
Unexpired insurance	654.51			654.51
Organization expenses	23,487.89	C23,487.89		
	$2,388,185.78	$14,950.38	$1,356,192.10	$3,729,427.50
Liabilities				
Bank loans	$105,007.31			$105,007.31
Sundry accounts payable	3,420.99			3,420.99
Reserve for Federal taxes		D$13,800.00	G$164,183.05	177,983.05
Deferred income	97,658.95		F12,000.00	85,658.95
Capital stock and surplus:				
Class A—101,771 shares	2,035,420.00			3,357,357.20
" B—250,000 "	50,000.00			
Surplus	96,678.53	28,750.38	1,204,009.05	
	$2,388,185.78	$14,950.38	$1,356,192.10	$3,729,427.50

A—Realized profits credited to asset account.
B—Accrued dividends written off.
C—Organization expenses written off.
D—Federal tax on adjusted profits.
E—Appreciation in securities based on bid prices.
F—Approximate adjustment of deferred income.
G—Federal tax on items E and F.

EXHIBIT III

NEW JERSEY BANKERS SECURITIES COMPANY—EQUITABLE FINANCIAL CORPORATION

Statement Showing Calculation of Market Value of Securities Owned As at January 31, 1929

	Securities Owned	Published bid price	Value at bid price	Published asked price	Value of average of bid and asked prices
New Jersey Bankers Securities Company:					
835	Franklin Washington Trust	$80	$66,800	$85	$68,887
1,130	Equitable Title and Mortgage Guaranty Co.	100	113,000		113,000
30,210	Hobart Service Trust Co.	45	1,359,450	60	1,586,025
59	National Bank of America	180	10,620		10,620
65	Journal Square Nat. Bank	235	15,275		15,275
20	Franklin Trust Company	225	4,500	235	4,600
1,150	Perth Amboy Nat. Bank	*250	287,500		287,500
658	Hamilton Trust Company	300	197,400		197,400
65	Passaic National Bank & Trust Company	490	31,850	515	32,663
2,499	Lebanon National Bank	240	599,760	260	624,750
338	New Jersey Nat. Bank and Trust Company	85	28,730	90	29,575
318	Guardian Trust Co. Participation certificates	*60	19,080		19,080
100	Empire Trust Company	510	51,000	518	51,400
100	Home Fire and Marine Ins. Co. of California	44	4,400	45	4,450
200	American, London and Empire Corp.	87	17,400		17,400
40	Franklin Fire Ins. Co.	455	18,200	460	18,300
50	Bank of United States—units	222	11,100	224	11,150
15	Bank of Manhattan Co.	845	12,675	850	12,712
200	Merchants & Mfgrs. Ins. Co.	25	5,000	27	5,200
5	Globe and Rutgers Ins. Co.	1,550	7,750	1,600	7,875
500	Seaboard Fire & Marine Ins. Co.	28	14,000	30	14,500
	Total New Jersey Bankers Securities Company's holdings		$2,875,490		$3,132,362

*Prices used by company's auditors, published quotations could not be found.

Equitable Financial Corporation					
43,000	Equitable Casualty and Surety Co.	$56	$2,408,000	$59	$2,472,500
90	Municipal Bank	600	54,000	610	54,450
857	Seventh Nat. Bank (quotations used are 60% of those for Municipal Bank)	360	308,520	366	311,091
	Total Equitable Financial Corporation's holdings		$2,770,520		$2,838,041

EXHIBIT B.

EQUITABLE FINANCIAL CORPORATION
and
NEW JERSEY BANKERS SECURITIES CO.

AGREEMENT

Dated, March 20th, 1929

(Copy)

MEMORANDUM OF AGREEMENT made this 20th day of March, 1929, between EQUITABLE FINANCIAL CORPORATION, a New York corporation having its principal office in the City, County and State of New York (hereinafter designated as the "party of the first part"), and the NEW JERSEY BANKERS SECURITIES COMPANY, a New Jersey corporation (hereinafter designated as the "party of the second part"), WITNESSETH:

The party of the first part is a New York corporation with an authorized capital stock of 500,000 shares of which 250,000 shares are common Class A. non-voting stock having a par value of $20 per share or a total par value of $5,000,000, of which 101,423 shares of a total par value of $2,028,460, are issued and outstanding, and 250,000 shares are common Class B. voting stock no par value, all of which Class B. stock is issued and outstanding.

The party of the second part is a corporation organized under the laws of the State of New Jersey with an authorized capital stock of 2,000,000 shares no par value common capital stock of

which there is issued and outstanding 642,639 shares, all of the said shares being fully paid and non-assessable.

The party of the first part is desirous of acquiring by purchase certain of the assets, property and effects owned, controlled or held by the party of the second part, a list of which assets is set forth in Schedule A. annexed hereto and made part hereof.

The party of the second party is willing to sell said assets subject, however, to the assumption by the party of the first part of the liabilities of the party of the second part set forth in Schedule B. annexed hereto and made a part hereof.

The party of the first part for the purpose of determining the properties of the respective parties and the values thereof has caused an audit to be made by Price, Waterhouse & Co., accountants and auditors of 46 Pine Street, City, County and State of New York, which audit bears date February 15, 1929, and sets forth and reflects the condition of both of the parties hereto as of January 31, 1929.

Both of the parties hereto respectively represent that there has been no substantial change in their financial condition since the date of said audit and respectively covenant and agree that there will be no substantial change in such condition pending the carrying out of the terms of this agreement.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and conditions herein contained and the sum of One Dollar by

each of the parties hereto to the other in hand paid, receipt whereof is hereby acknowledged, it is hereby covenanted and agreed as follows:

I. The party of the first part agrees to purchase from the party of the second part and the party of the second part agrees to sell to the party of the first part the assets, property and effects of the party of the second part set forth in said Schedule A. attached hereto and made a part hereof, subject, however, to the liabilities of the said party of the second part as set forth in said Schedule B. hereto attached and made a part hereof.

II. The purchase price shall be 152,349 shares of the full paid and non-assessable Class A. capital stock of the party of the first part and in addition thereto one share of said stock for each four shares of the stock of the party of the second part heretofore subscribed for and subsequently issued upon either the payment of the balance of the subscription price of the commutation of the subscription contract and in addition an option to the party of the second part extending until March 20, 1930, for the purchase of all or any part of 8,310 shares of said Class A. capital stock of the party of the first part at $34 in cash per share.

III. This agreement of purchase and sale is subject to the following conditions precedent:

(a) The approval of this contract by the Board of Directors of the party of the first part;

(b) The approval of this contract by a majority of the whole Board of Directors of the party of the second part and the consent to the same in writing by the holders of a majority of its capital stock issued and outstanding as required by its charter and, if required by the party of the first part, the holders of 16 2/3% of the shares of stock of the party of the second part issued and outstanding in addition to said majority;

(c) The amendment of the certificate of incorporation of the party of the first part so as to provide that on liquidation, either by dissolution of the Company or otherwise, the holders of its Class A. stock shall be entitled to receive $60 per share before any payment shall be made to the holders of the Class B. stock.

(d) The written assent of Harry H. Weinberger to the transfer by the party of the second part to the party of the first part of the obligation of said Harry H. Weinberger appearing on said Schedule A. in the amount of $2,375,000, and the agreement on the part of the party of the first part that it will take said obligation over at its full face value with the same force and effect as the said obligation now inures to the benefit of the party of the second part;

(e) The approval by counsel for both the parties of the first and second parts of the form of and of the legality and propriety

of the proceedings to be taken by both the parties hereto as well as their approval of all papers, instruments of transfer or other documents necessary or proper for the purpose of carrying out this agreement.

IV. It is mutually understood and agreed that upon the foregoing conditions being complied with the party of the first part shall forthwith deposit in escrow with as depositary the said purchase price consisting of 152,349 shares of the full paid and non-assessable Class A. capital stock of the party of the first part and the option agreement in favor of the party of the second part hereinbefore provided for, and the party of the second part will deposit in escrow with said depositary the assets, properties and effects set forth in said Schedule A. hereto annexed and made a part hereof, all certificates of stock and similar securities to be duly endorsed in blank ready for delivery and with either the necessary transfer stamps attached thereto or the funds necessary to procure the same and paid over to the depositary for that purpose.

It is further understood and agreed that forthwith upon such deposit application will be made for the transfer from the party of the second part to the party of the first part of the certificates for all shares of stock in New Jersey trust companies or banks included in said Schedule A. and that when said certificates are so transferred to the party of the first part or duly accepted for transfer by the said New Jersey trust companies or banks then the depositary shall deliver to the party of the second part the said purchase price consisting

of said 152,349 shares of the full paid and non-assessable Class A. capital stock of the party of the first part and shall deliver to the party of the first part the said assets, properties and effects so purchased by the party of the first part from the party of the second part.

V. The party of the first part covenants and agrees and such covenant is hereby made a condition subsequent to the carrying out of this agreement that it will forthwith upon the receipt of said assets, properties and effects listed in said Schedule A. from said depositary elect to its Board of Directors four persons to be selected from the membership of the Board of Directors of the party of the second part by said Board, and further covenants and agrees that it will at the same time cause a majority of the Class B. stock of the party of the first part to be deposited under the terms of a Voting Trust Agreement approved by counsel for both parties hereto in the hands of six Voting Trustees three of whom are to be named by the party of the first part and three by the party of the second part and which Voting Trust Agreement shall continue for a period of three years from said date.

The Voting Trust Agreement shall provide that the said Voting Trustees shall vote for the said four persons hereinbefore named for the office of director of the party of the first part during the life of said Voting Trust Agreement and shall further provide that in case of the death, resignation or disqualification of any of said four directors his successor shall be selected by the Voting Trustees from the members of the Board of Directors of the party of the second part now in office and

the person so selected shall forthwith take the place of the one so dying, resigning or becoming disqualified as if the person so selected had been originally designated in this agreement. The Voting Trust Agreement shall further provide that in case of the death, resignation or disqualification of any Voting Trustee his successor shall be chosen by those of the Trustees remaining who were appointed by the same authority as the Trustee so dying, resigning or becoming disqualified. The Voting Trust Agreement shall also provide that said Voting Trustees shall have no power to vote for any purpose except for the election of directors and that with the exception of the four directors designated they shall vote said stock for directors chosen by the holders of voting Trust Certificates representing a majority of the shares of B. Common stock deposited with said Voting Trustees and shall also provide that the stock deposited shall not be voted for any increase of said Class B. stock.

VI. The party of the first part covenants and agrees and such agreement is made a condition subsequent to this agreement that for a period of six months from the date of delivery of said assets, properties and effects by the said depositary to the party of the second part and until the party of the first part shall have paid three successive quarterly dividends, of which the dividend paid March 1, 1929, may be one, of not less than 30 cents a share upon its Class A. Common stock the party of the first part will not pay any salaries to its present chief executive officers and will not pay any salaries to any executive officers who are not active in the management of the corporation and

will only incur and pay such reasonable expenses as are necessary for the operation of the party of the first part.

VII. This agreement shall inure to the benefit of and shall be binding upon the successors and assigns of the parties hereto.

IN WITNESS WHEREOF the parties hereto have caused these presents to be signed by its proper officers and its corporate seals to be hereto affixed the day and year first above written.

EQUITABLE FINANCIAL CORPORATION
By HAROLD SPIELBERG,
President.

Attest:

LESTER E. BACHNER
Secretary.

NEW JERSEY BANKERS
SECURITIES COMPANY
By E. I. EDWARDS,
President.

Attest:

CATHERINE E. MATEY
Secretary.

State of New York,
County of New York—ss.:

On this 20th day of March, 1929, before me personally came Harold Spielberg to me known, who being by me duly sworn, did depose and say, that he resides in New York City that he is the President of Equitable Financial Corporation, the corporation described in and which executed the above instrument; that he knows the seal of said

corporation and that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of the said corporation and that he signed his name thereto by like order.

.....

signed by notary

State of New Jersey,
County of Essex—ss.:

BE IT REMEMBERED that on the 20th day of March, 1929, before me a Master in Chancery of New Jersey personally appeared Catherine E. Matey to me known, who, being duly sworn according to law, on her oath doth depose and say: That she is the Secretary of New Jersey Bankers Securities Company, the corporation named in and which executed the foregoing instrument; that the seal affixed to said instrument is the corporate seal of the said corporation that E. I. Edwards is the President of the corporation; that she saw the said E. I. Edwards as such President sign the said instrument and heard him declare that he signed, sealed and delivered the same as the voluntary act and deed of the said New Jersey Bankers Securities Company by its order; and that this deponent signed her name thereto, at the same time, as subscribing witness.

.....

Signed CATHERINE E. MATEY

Subscribed and sworn to before me the day and year above written.

(Signed) CLEMENT K. CORBIN
Master in Chancery of N. J.

SCHEDULE A.

Assets of New Jersey Bankers Securities Company as at January 31, 1929, as per report of Price, Waterhouse & Co. dated February 15, 1929, to be transferred to Equitable Financial Corporation.

Cash	208,074.15
Deposit on Journal Square Bank Stock	50,000.00
Notes Receivable from Subscribers	17,875.00
Notes Receivable	9,000.00
Due from H. Weinberger	2,375,000.00
Sundry Accounts Receivable, Accrued Interest, etc.	32,736.93
Allied Bankshares Co.	
Furniture and Fixtures	
Prepaid Premium on Fidelity Bond	
Amounts Receivable from Subscribers to Capital Stock of Company, if, when and as Received.	

Investments as Follows:

No. of Shares	Name of Company
835	Franklin Washington Trust
1130	Equitable Title & Mortgage Guaranty Co.
30210	Hobart Service Trust Co.
59	National Bank of America
65	Journal Square National Bank
20	Franklin Trust Co.
658	Hamilton Trust Co.
65	Passaic National Bank and Trust Co.
2499	Lebanon National Bank
338	New Jersey National Bank & Trust Co.

318	Guardian Trust Co. Participation Certificates	
100	Empire Trust Co.	
100	Home Fire and Marine Ins. Co. of California	
200	American, London and Empire Corp.	
40	Franklin Fire Ins. Co.	
50	Bank of United States—units	
15	Bank of Manhattan Co.	
200	Merchants and Manufacturers Ins. Co.	
5	Globe & Rutgers Ins. Co.	
500	Seaboard Fire and Marine Ins. Co.	

SCHEDULE B.

Liabilities of New Jersey Bankers Securities Company as at January 31, 1929 as per report of Price, Waterhouse & Co. dated February 15, 1929, to be assumed by Equitable Financial Corporation.

Accounts payable	$23,872.88
Capital stock subscriptions in so far as same remain uncancelled and unadjusted	
Provision for possible liabilities	$360,000.00

EXHIBIT C.

NEW JERSEY BANKERS SECURITIES CO.
Military Park Building
Newark, New Jersey

Office of the President Telephone 10300 Mitchell

March 21, 1929.

To the Stockholders of
New Jersey Bankers Securities Company:

We are enclosing herewith notice of a special meeting of stockholders of your Company, to be

held on April 5th, 1929, at 11 A. M., at the Company's office, Room 607, Military Park Building, 60 Park Place, Newark, N. J., for the purpose of approving the action of the Board of Directors in the sale of assets to the Equitable Financial Corporation for stock of that corporation.

This is a very important meeting and if you are unable to attend in person, please do not fail to execute and return the enclosed proxy as soon as possible, in the enclosed stamped envelope.

Out of all the propositions presented to the Company, and after weeks of intensive study and consideration, the only plan that seemed feasible to your Board of Directors was the proposal of the Equitable Financial Corporation, which is a company on a dividend paying basis.

The contract referred to in the notice will be presented at the meeting and read to the stockholders. For your information, the contract of sale executed between your Company and the Equitable Financial Corporation, and duly approved by the Board of Directors of both companies, contemplates, when the transaction is completed, that for each four shares of stock they now hold, the stockholders of your company will receive one share of non-voting Class A Common Stock of the Equitable Financial Corporation. This stock has been appraised by Messrs. Price, Waterhouse and Company, accountants of national repute, of 56 Pine Street, New York City, as having a book value of $33.57, as reflected in their audit made as of January 31, 1929, which is open for your inspection in the Company's office.

The Equitable Financial Corporation is an existing and operating investment company formed under the laws of the State of New York, which

will place at the service of the stockholders a highly skilled management. This company owns 43,000 shares out of 100,000 shares of stock of Equitable Casualty and Surety Company, which is a casualty and surety company operated by men with long experience who enjoy a national reputation and who are members of the Board of the Equitable Financial Corporation. The latter company is paying quarterly dividends at the rate of $1.20 per annum to its Class A common stockholders.

In recommending this to the stockholders your Board feels unusually fortunate in securing for itself and the stockholders the opportunity to consummate this transaction. The Board wishes further to state that the basis for the exchange was predicted upon the report of Price, Waterhouse and Company, on the respective book values of the companies.

Another one of the considerations which prompts your Board to favor this proposition is the fact that the Equitable Financial Corporation stock is listed as an over the counter security, is quoted daily in the metropolitan newspapers, and has a ready purchase and sale market.

The following is a list of the directors of the Equitable Financial Corporation: Lester R. Bachner, I. M. Fine, Samuel S. Koenig, Louis H. Kingstone, John L. Mee, Robert J. Maloy, Maurice Rentner, Harold Spielberg, Eugene T. Warner, David Scope, Bernard Spielberg; immediately upon the completion of this transaction there will be added seven names, composed of three prominent bankers of New York City, who have expressed their willingness to serve as directors, and also

four members of the present New Jersey Bankers Board.

The undersigned, your President, will be available daily between this date and the 5th day of April, 1929, between 10 A. M. and 4 P. M., at the offices of your company, to answer all questions and give you the reasons why he is heartily in favor of this proposed arrangement, and you are welcome and requested to call at the office, but should you find it inconvenient to do so, I advise you to sign the enclosed proxy and mail same to me.

Yours very truly,

EDWARD I. EDWARDS,
President.

Affidavit of Solomon Bernstein.

IN CHANCERY OF NEW JERSEY.

On Bill, etc.

Between

SOLOMON BERNSTEIN,
Complainant,

and

NEW JERSEY BANKERS SECURITIES CO., a corporation et als.,
Defendants.

State of New Jersey,
County of Essex—ss.:

SOLOMON BERNSTEIN, of full age, being duly sworn on his oath according to law, deposes and says:

Affidavit of Solomon Bernstein.

1. I am the complainant in the above entitled cause and am the owner of 61 and ¾ shares of the common capital stock of the defendant, New Jersey Bankers Securities Co. I became such owner on December 11, 1928. The authorized capital stock of said company is 2,000,000 shares of common stock, of no par value, of which there are now outstanding 642,639 shares, all paid for and non-assessable. Said shares of stock are held by approximately 15,000 stockholders. The directors of said company are the following:

Edward I. Edwards	William A. Evans
Abraham Jelin	Stewart C. Ross
Bernard L. Stafford	John T. McCormick
John J. Roegner	George Morrissey
Dr. Robert R. Armstrong	Charles Veghte

The president of the company is Edward I. Edwards and the Vice-President and General Manager is Abraham Jelin.

2. The net assets of said company amount to approximately $5,000,000. Attached to my bill of complaint in this suit is a true copy of an audit made by Price, Waterhouse & Co., Certified Public Accountants, showing the true assets, liabilities and net worth of said company.

3. The Equitable Financial Corporation is a New York corporation with an authorized capital stock of 500,000 shares, of which 250,000 shares are Common Class A non-voting stock, having a par value of $20.00 per share, of which 101,423 shares of a total par value of $2,028,460 are issued and outstanding; and 250,000 shares of Common Class B voting stock of no par value, all of

which Class B voting stock is issued and outstanding. I am informed and verily believe and I charge the fact to be that said Class B voting stock was purchased and acquired by the holder or holders thereof for the sum of $50,000, and that 90% of said Class B stock is held by one person, Mr. Harold Spielberg, of New York, who is the President of said Equitable Financial Corporation, and that by reason of said stockholding of said Class B voting stock, the said Harold Spielberg is in full and complete control of said company, the election of its directors and officers, and the management of its business, affairs and transactions.

4. I say that the gross assets of said Equitable Financial Corporation, as determined by an audit made as of January 31, 1929, by the aforenamed Price, Waterhouse & Co., amount, according to the books of said company to $2,388,185.78, which assets have, however, been figured on some basis of adjustment so as to appear on said audit to amount to $3,729,427.50. I am informed and charge the fact to be that the gross assets of said Equitable Financial Corporation do not in true value exceed the first named sum of $2,388,185.78, and that many of the items contributing to such aggregate figure of gross assets are of doubtful value and of such character as to have no ready market for the sale thereof.

5. The aforementioned audit of Price, Waterhouse & Co. attached to said bill of complaint, marked "Exhibit A," contains an audit of the assets and liabilities of the said Equitable Financial Corporation. Although said audit of both

corporations was made as of January 31, 1929, I am informed that the present financial condition of each company is substantially as shown on said audit.

6. On or about the 20th day of March, 1929, the officers of said New Jersey Bankers Securities Co., over the objection of three directors of said company, viz. Messrs. Abraham Jelin, William V. Evans and Charles B. Veghte, entered into written articles of agreement in the name and in behalf of said New Jersey Bankers Securities Co. with the officers of said Equitable Financial Corporation, wherein the said New Jersey Bankers Securities Co. did agree to sell unto the said Equitable Financial Corporation the assets, properties and effects of the former, shown in "Schedule A" attached to said articles of agreement, subject to the liabilities of the former, set forth in "Schedule B" attached to said articles of agreement, being all the assets and liabilities set forth in the aforementioned audit of Price, Waterhouse & Co. For the conveyance of said assets, properties and effects the said Equitable Financial Corporation agreed to pay 152,349 shares of the full paid non-assessable Class A capital stock of said purchasing company, being non-voting stock, and in addition thereto one share of said stock for each four shares of stock of the New Jersey Bankers Securities Co., heretofore subscribed for and hereafter issued upon either the payment of the balance of the subscription price or the commutation of the subscription contract, and in addition thereto an option to the selling company until March 20, 1930, for the purchase of all or any part of 8310 shares of said Class A non-voting capital stock of

said Equitable Financial Corporation at $34.00, in cash, per share.

7. A true copy of said articles of agreement are annexed to said bill of complaint marked "Exhibit B."

8. The said articles of agreement were, on or about the 20th day of March, 1929, approved by a majority of the directors constituting the Board of Directors of the defendant, New Jersey Bankers Securities Co. Such approval was given at a meeting of said Board held at the office of said company, at which meeting three of the ten directors constituting said Board, viz. Messrs. Abraham Jelin, William V. Evans and Charles B. Veghte, did oppose the approval and confirmation of said agreement and did insist that the same was unfair to the stockholders of said New Jersey Bankers Securities Co. and would constitute an inequitable and illegal disposition of the company's assets and properties, to the great detriment and injury of its stockholders. Notwithstanding such objections, the said Board, by a majority vote, approved said agreement and resolved to submit the same to the stockholders for their approval.

9. On or about the 21st day of March, 1929, the President of the New Jersey Bankers Securities Co., Mr. Edward I. Edwards, caused to be sent to each stockholder of said company a letter whereof a true copy is set forth in paragraph fourteen of my said bill of complaint.

10. I am informed that if the said articles of agreement are approved by a majority of the

stockholders of the said New Jersey Bankers Securities Co., the officers of said company and such of its directors as have approved said agreement will forthwith perform said agreement and will deliver to the Equitable Financial Corporation all the assets, properties, securities, moneys and effects of the said New Jersey Bankers Securities Co. to my loss and damage.

11. On or about the 26th day of March, 1929, I received through the mails a letter sent by Abraham Jelin, William V. Evans and Charles B. Veghte, a true copy whereof is set forth in Paragraph fourteen of the bill of complaint herein filed. I am informed and I say that said letter was sent to all the stockholders of said New Jersey Bankers Securities Co., numbering approximately fifteen thousand.

SOLOMON BERNSTEIN.

Sworn and subscribed to before me this
1st day of April, 1929.

MAX M. ALBACH,
Master in Chancery
of New Jersey.

Affidavit of Abraham Jelin.

(Filed April 9, 1929.)

IN CHANCERY OF NEW JERSEY.

On Bill, etc.

Between

SOLOMON BERNSTEIN,
Complainant,

and

NEW JERSEY BANKERS SECURITIES CO.,
a corporation, et als.,
Defendants

State of New Jersey,
County of Essex—ss.:

ABRAHAM JELIN, of full age, being duly sworn on his oath according to law, deposes and says:

I am the Vice-President and General Manager of the defendant company, New Jersey Bankers Securities Co., and have been such for about seven months. I am acquainted with the securities and holdings of said company and their value.

The company employs as its auditors a firm of certified public accountants. That firm is Arnold Markel & Co., located at #2 Lafayette Street, New York City, New York, the senior member of which firm is Mr. Arnold Markel. I have, with the aid of Mr. Arnold Markel, made a study of the financial statements of the said defendant company and of the Equitable Financial Corporation, as such statements appear annexed to the bill of

New Jersey State Library

complaint filed in the above cause. The financial statements last referred to are the statements attached to the report of Price, Waterhouse & Co., dated February 15, 1929, known as "Exhibit A" attached to said bill of complaint. I have also, with Mr. Markel's aid, made a study of an earlier report submitted by Price, Waterhouse & Co., under date of February 7, 1929, a true copy of which is attached to this affidavit, which last mentioned report was addressed to Mr. Harold Spielberg, of the Equitable Financial Corporation, and to Mr. Harry Weinberger, of the New Jersey Bankers Securities Co.

I am the person who caused to be sent to the stockholders of the New Jersey Bankers Securities Co. the letter under date of March 25, 1929, set forth in full in Paragraph 14 of the said bill of complaint, in which letter I pointed out, amongst other objections, that stockholders of the New Jersey Bankers Securities Co. should receive at least 229,515 shares as against the 152,349 shares therein mentioned. I arrived at my figure of 229,515, which involves a variance of 77,166, by the following process:

In the report of Price, Waterhouse & Co., dated February 15, 1929 (Exhibit "A" attached to Bill) market prices have been used as of January 31, 1929, as the basis for the valuation of the investments owned by both companies aforementioned. In arriving at such market prices, Price, Waterhouse & Co. averaged the bid and ask quotations as published in the newspapers for over the counter quotations on January 31, 1929.

In the case of investments in owned or controlled subsidiary companies, the common practice in determining values in cases of exchange of the

type proposed between the New Jersey Bankers Securities Co. and the Equitable Financial Corporation, is to take the book values of the stock of such owned or controlled subsidiaries.

The holdings of owned or controlled subsidiaries in the case of New Jersey Bankers Securities Co. are:

30,210	shares	Hobart Service Trust Co.
1130	"	Equitable Title & Mortgage Guaranty Co.
1150	"	Perth Amboy National Bank
2499	"	Lebanon National Bank

The holdings of the owned or controlled subsidiaries in the case of Equitable Financial Corporation are:

43,000	shares	Equitable Casualty & Surety Co., a New York Corporation.

Substituting book values in the case of the above holdings in place of the market prices used by Price, Waterhouse & Co., I arrive, in the case of New Jersey Bankers Securities Co., at a total net asset of $4,343,642. against 627,385½ shares outstanding, or a rate of 6.93 per share.

Substituting book values in the case of the above holdings in place of the market prices used by Price, Waterhouse & Co., I arrive, in the case of Equitable Financial Corporation, at a total net asset of $1,976,275. against 101,771 A shares outstanding, or a rate of $19.42 per share.

Based on the above rates per share, the basis for exchange would be approximately 2.8 shares of the New Jersey Bankers Securities Co. for one Class

A share of the Equitable Financial Corporation. Carrying this out and applying it to the proposed transaction, the mathematical result achieved is the 229,515 shares aforementioned. This is accomplished by dividing the 627,385½ shares previously stated, plus 15,256½ shares issued since January 31, 1929, or a total of 642,642 shares, by 2.8.

In opposing as a director of the New Jersey Bankers Securities Co. the proposed deal with the Equitable Financial Corporation, I held and expressed the view that it is unfair to use as a basis for exchange, or for the deal, over the counter market quotations, particularly where so much of the stock is held and controlled by one man or a small group of men. I am reliably informed and I believe that the main asset of the Equitable Financial Corporation are shares of stock of the Equitable Casualty & Surety Co., in which latter company 43% of the stock is held by the Equitable Financial Corporation, and about 45% is held by Harold Spielberg personally. In addition to this, Harold Spielberg owns about 90% of the Class B stock, which is the only voting stock, of the Equitable Financial Corporation. Market quotations in over the counter securities (being unlisted securities) are so often the result of inside manipulation and private influence and not predicated upon book value and earning power. This thought was, in my opinion, responsible for the statement appearing in the report of February 7, 1929, by Price, Waterhouse & Co., in which appears the following paragraph:

"In valuing 43,000 shares of Equitable Casualty and Insurance Company stock, we

have used $57-½ per share; it might be questioned whether or not so large a block of stock should be valued at the published market price."

I also direct the Court's attention to paragraph (f) on page 2 of the report of Price, Waterhouse & Co., under date of February 15, 1929, in which paragraph doubt is expressed as to what is the fair basis for the value of the securities for the purpose of the transaction.

I say that the agreement of March 20, 1929, made between the defendant company and the Equitable Financial Corporation was negotiated by Mr. Harry H. Weinberger, the former president of the defendant company. He negotiated the deal with Mr. Harold Spielberg of New York. The first proposition submitted to us, as directors, contemplated the extinguishment of the personal liability of Harry H. Weinberger, amounting to $2,300,000, and is so expressed in the report of Price, Waterhouse & Co., under date of February 7, 1929. A photostatic copy of that report is annexed to this affidavit and is made part hereof. The ratio of exchange under that first proposition was the same as at the present time, to wit, 4 shares of New Jersey Bankers Securities Co. for one share of Class A of the Equitable Financial Corporation. Mr. Evans, Mr. Veghte and I objected to this, saying that we would sanction no transaction which had for its purpose releasing Mr. Weinberger. Thereafter, the transaction evidenced by the agreement of March 20, 1929, was presented, by which the Weinberger indebtedness of $2,300,000 is taken over as an asset by the Equitable Financial Corporation of New York, and yet the ratio of exchange would be the same as under the former

transaction in which the Weinberger liability would not enter as an asset and was to have been extinguished. I stated that this indicated that the transaction was designed to help Harry Weinberger out of meeting an obligation, and that if the first offer of four to one was fair, then the second offer was unfair, since by adding $2,300,000 to the assets being taken over, the ratio should be correspondingly and appropriately increased.

I say that the provision in the contract of March 20, 1929, which makes the deal conditioned upon Harry Weinberger assenting to the taking over of his indebtedness is designed as a method whereby he can accomplish favorable terms for his release from that indebtedness.

I direct the Court's attention to paragraph 4 of the Price, Waterhouse & Co. report of February 7, 1929, hereto attached, in which it is clearly indicated Weinberger would be released from his indebtedness of $2,300,000 upon returning a portion of the capital stock he holds.

I further say that in determining the assets of the two companies for the purpose of exchange, Price, Waterhouse & Co., in their report of February 15, 1929, reduced the assets of the New Jersey Bankers Securities Co. (as shown in their former report of February 7, 1929) by $845,000, for which reduction there is neither legal nor business justification. This reduction of about $845,000 was accomplished by the accountants within the space of one week. Both reports of Price, Waterhouse & Co., viz., that of February 7th and that of February 15th are based on the same set of figures, namely, the condition of the company as of January 31, 1929.

Affidavit of Abraham Jelin.

As further evidence of the fact that market conditions for unlisted securities are not dependable for the purpose of trade or exchange, I point to the fact that within the last forty-eight hours, the quotations on the Equitable Casualty & Surety Co. dropped from 56 bid, 59 asked, to 45 bid and 50 asked, a drop in the bidding price of 11 points, which translated on the whole number of the shares (43,000) of said company held by the Equitable Financial Corporation, results in the loss of $473,000. For the purpose of the transaction, Messrs. Spielberg and Weinberger, used as the value for the Equitable Casualty & Surety Co. stock, $57.50 per share. The variance between that figure and the amount bid today for that stock is 12½ points and means a loss of $537,500. The actual book value of the Equitable Casualty & Surety Co. as shown on their last fiscal statement (as of December 31, 1928) is $24.63. The condition of the company is substantially today as it was three months ago. Taking the difference between the book value of $24.63 and the sum of $57.50 (which was the amount figured by Messrs. Spielberg & Weinberger), there is an inflation of approximately $33.00 per share, or a gross inflation of $1,419,000. It is my insistence that a fair exchange should be based entirely on a book value of the two companies and with a proper regard to preserving the voting power of stockholders. I have always contended with my fellow directors that the appropriate ratio of exchange should be three shares of the New Jersey Bankers Securities Co. for a unit of one share of A and one share of B of the common stock of the Equitable Financial Corporation.

The proposed transfer from the New Jersey

Bankers Securities Co. to the Equitable Financial Corporation is of all of the assets of the former, excepting 1,150 shares of the capital stock of the Perth Amboy National Bank. Those 1,150 shares have an approximate value of $287,000. They are omitted from the deal for the reason given that the Davis Act stands in the way of their present transfer. Their transfer to the Equitable Financial Corporation at some time in the future was arranged by the option contained in Paragraph II of the agreement of March 20, 1929, by which option the New Jersey Bankers Securities Co. may purchase 8,310 shares of the Class A capital stock of the Equitable Financial Corporation at $34.00 in cash, the gross purchase price being the value of the Perth Amboy National Bank stock, it being contemplated that if said option is exercised, the cash thereby realized by the Equitable Financial Corporation would be used to pay for the Perth Amboy National Bank stock. This, I say, if carried out, accomplishes a complete transfer of all the assets of the New Jersey Bankers Securities Co. in exchange for the stock of the Equitable Financial Corporation.

ABRAHAM JELIN.

Sworn and subscribed to before me
this 8th day of April, 1929.

SADIE HAUSMAN,
Notary Public of N. J.

Affidavit of Abraham Jelin.

PRICE, WATERHOUSE & CO.

56 Pine Street
New York, February 7, 1929

Mr. Harold Spielberg,
Equitable Financial Corporation

Mr. Harry H. Weinberger,
New Jersey Bankers Securities Company

Gentlemen:

In accordance with your request that we suggest a basis of exchange for the acquisition of the assets of New Jersey Bankers' Securities Company by issuance of additional Class A stock of Equitable Financial Corporation, we submit the following preliminary report on our examination of the accounts of the two companies now in progress but uncompleted. We understand that the Equitable Financial Corporation proposes to amend its certificate of incorporation to provide for a change in the amount to be received by its respective Class A and Class B shares in liquidation. The Class A shares now outstanding are entitled to $20 in liquidation before any assets are distributed to the holders of Class B stock; the holders of the latter stock then receive $10 per share and the balance of assets is to be apportioned equally among the shareholders of both classes. Under the proposed amendment, the Class A stockholders will receive $40 per share in liquidation before anything becomes payable to the Class B holders. It seems to us that other preferences of the two stocks as to dividends and voting rights need not be considered in the present instance.

The combined Class A and Class B capital stocks of the Equitable Financial Corporation outstanding is shown by the books as at January 31st, 1929, to be $2,182,098.53. In the following summary we suggest the adjustments which would be necessary to be made and the revaluation of assets which might be proper to be made in ascertaining the exchange value of these shares.

Book value, as above		$2,182,098.53
Adjustments:		
Organization expenses to be written off	$23,487.89	
Federal taxes to be provided for	13,000.00	
Accrued dividends on Equitable Realty and Service Company's stock to be reversed	1,052.33	
	$37,540.22	
Less—Profits on sales of securities contained in stocks and bonds account	9,589.84	
Net reduction in book value due to adjustments		27,950.38
		$2,154,148.15

	Basis #1	Basis #2
Deduct—		
Estimated liability for attorneys' fees	$60,000.00	$60,000.00
Contingent liability in connection with the purchase of Journal Square bank stock	300,000.00	
Sundry accounts payable	24,148.38	24,148.38
Total liabilities	$384,148.38	$84,148.38
Net Assets	$3,252,553.76	$3,722.401.49

In consideration of the two bases of value given to certain items shown above, we offer the following comments:

1. Securities have been valued under basis #1 at the market values as at January 31, 1929, although we have not been able to substantiate in some cases the quotations furnished us inasmuch as official publication thereof has not been made; in basis #2 we have used the market prices prevailing at December 31, 1928, shown on your auditor's statement in respect of those stocks still held and the market prices of January 31, 1929, in respect of new stocks purchased during January of this year.

2. The collectibility of the amount due from Allied Bankshares Company may be

questioned inasmuch as it represents the excess of amounts advanced to that company over the commissions earned in marketing the stock of New Jersey Bankers Securities Company.

3. In connection with the purchase of Journal Square Bank stock, the company deposited $50,000 (shown as an asset in both cases above) with the seller. At the present time the company holds a judgment against the seller for the return of that deposit; the seller has, however, entered a suit for approximately $300,000 representing the loss to him between the selling price under his contract with the company and the amount realized by him upon subsequent liquidation. Inasmuch as the seller liquidated his holdings after the injunction prohibiting the consummation of the transaction between the company and him had been vacated, we were informed that the company expected to defeat the suit and, accordingly, do not include this liability under Basis #2.

4. We were also informed that Mr. Weinberger expects to enter into an agreement with the company whereby he will return for cancellation a portion of the capital stock he holds in liquidation of his indebtedness to the amount of $2,300,000 leaving $75,000 due on stock sold to him for $200,000 the balance having been paid in cash. For this reason we have considered the balance of his note ($75,000) an asset of the company to be transferred.

Appreciation in stocks owned to average of bid and asked prices as of January 31, 1929	$1,433,302.94	
Less—Federal taxes payable thereon	171,996.35	1,261,306.59

Total value of the capital stocks, as adjusted, represented by:	
101,771 Class A shares and 250,000 Class B shares	3,415,454.74

On the basis of the proposed amendment to the certificate of incorporation, the entire amount of $3,415,454.74 above would be payable to the Class A stockholders at the rate of $33.00 per share.

It might be mentioned that the company has adopted, for the purpose of taking into earnings the bonus on loans made, a basis of amortizing this bonus monthly in equal amounts over the life of each loan, disregarding the principal of the loan outstanding at any given date. It would seem proper to restate the amount of unearned bonus on the second basis which would result in additional surplus of the company to the extent of approximately $12,000, say 12c. per share of Class A stock, giving the stock an exchange value of $33.12 per share.

In valuing 43,000 shares of Equitable Casualty and Insurance Company stock owned, we have used $57½ per share; it might be questioned whether or not so large a block of stock should be valued at the published market price.

In consideration of the value of assets of New Jersey Bankers Securities Company which it is

proposed to acquire, we give below two bases for valuing these assets, the first being considerably less favorable than the other:

	Basis #1	Basis #2
Cash	$208,074.15	$208,074.15
Stocks owned	3,235,733.00	3,380,551.98
Deposit on purchase of Journal Square stock in litigation	50,000.00	50,000.00
Notes receivable	26,875.00	26,875.00
Due from Allied Bankshares Co.	.....	25,028.75
Accounts receivable	32,736.93	32,736.93
Sundry assets	8,283.06	8,283.06
Balance of note of H. H. Weinberger to be retained	75,000.00	75,000.00
Total assets	$3,636,702.14	$3,806,549.87

Based on a valuation of $33.00 per share for the Class A stock of Equitable Financial Corporation, it would appear that the company should issue between 98,562 (under Basis #1) and 112,800 (under Basis #2) shares in the acquisition of the net assets (excepting subscriptions to capital stock) of New Jersey Bankers Security Company. It will, of course, be understood that all figures contained herein are furnished you tentatively inasmuch as our examinations of the books of both companies are as yet incomplete.

Yours very truly,

PRICE, WATERHOUSE & CO.

Statement Re Affidavits of Directors.

Answering affidavits of directors are already printed on pages 447 to 511 of state of case printed by appellants.

Reply Affidavit of Abraham Jelin.

(Filed April 16, 1929.)

IN CHANCERY OF NEW JERSEY.

On Bill, &c.

Between

SOLOMON BERNSTEIN,
Complainant,

—and—

NEW JERSEY BANKERS SECURITIES CO.,
a corporation, et als.,
Defendants.

State of New Jersey,
County of Essex—ss.:

ABRAHAM JELIN of full age, being duly sworn according to law on his oath, deposes and says:

1. I have seen the affidavits made by Stuart C. Ross, George E. Morrissey, Edward I. Edwards, Robert R. Armstrong, John J. McCormick, Harry H. Weinberger and Chester Whiting DeMond, and I am acquainted with the contents of the said affidavits, having heard the same read to me.

2. The said Stuart C. Ross is employed by

Worth's, Inc., of which company the said Weinberger and one Kaplan, who is a brother-in-law of said Harry H. Weinberger, are officers.

3. In paragraph 7 the said Ross sets forth that a block of 43,000 shares of the Equitable Casualty & Surety Co. represents virtual control of that company. Said statement is inaccurate in that there are 100,000 shares of the stock of said company issued and outstanding, of which Harold Spielberg owns 45,000 outright and has the controlling vote in said company.

4. In paragraph 7-a of his said affidavit, the said Ross sets forth that one of the pertinent considerations which caused seven members of the board of directors of the corporate defendant to vote in favor of the proposed sale was that a careful study of the financial statements of the Equitable Casualty & Surety Co. impressed them. No statement of the Equitable Casualty & Surety Co. excepting a balance sheet of said company as of December 31, 1928, was ever presented to this board and so far as I know this board never made a careful study of any such statements.

5. I deny specifically the allegations set forth in Paragraph 8 of said Ross' affidavit in which he states that "said Jelin had definitely committed the corporate defendant" to invest approximately $350,000 for the stock needed to continue control of the Lebanon National Bank. I have never committed the corporate defendant to any scheme to purchase additional stock of the Lebanon National Bank for the purpose of obtaining control of that bank, nor do I know anything concerning any scheme to increase the stock of said bank.

6. It is true that the Hobart Service Trust Company requested the corporate defendant to take over certain assets of said trust company in the form of notes of Harry Weinberger, but it is not true that the corporate defendant or the board of directors thereof ever considered taking over such assets, or that there was any compulsion on the part of the said defendant to take over said assets or to make a cash outlay of approximately $350,000 for said assets.

7. The said Ross in his affidavit in Paragraph 17 points to the fact that 440,000 shares of the outstanding capital stock of the company have given proxies in favor of the proposed sale. This statement is inaccurate as at most such proxies represent 415,000 shares, which figure includes the 172,000 shares held by Edward A. Markley. Deducting the Markley shares from the total of 415,000 shares, for which proxies have been given, leaves a balance of 243,000 shares, which compared with the 627,000 outstanding shares makes considerably less than the majority of the outstanding shares. I have examined a good many of the said proxies and I find that some of said proxies are questionable as to their signatures.

8. It is not true as stated in Paragraph 18 of said Ross' affidavit that I told Ross at meetings of the Board of Directors, while the transaction in question was the subject of discussion, that I had already referred the matter to the Court and that such statement was made by me before the contract had been submitted to the Board and before the Board of Directors had full knowledge of the terms thereof. I have never submitted the matter to the Court and whatever has been done

in the matter was done subsequent to the approval of the contract by the Board of Directors and the actual execution thereof.

9. The affidavit of the said Ross and the affidavit made by Harry H. Weinberger both refer to a deficit of approximately $708,000 which appears on the corporate defendant's books. It is true that there appears a deficit of substantially that amount on the company's books but said deficit is a heritage from the Weinberger regime and since the reorganization of the said company, the said deficit has been reduced by $170,000.

10. I specifically deny the allegations contained in Paragraphs 23, 24 and 25 relating to the earnings of and the value of the stock of the Equitable Casualty & Surety Co. I further deny that the allegation contained in Paragraph 26 of the said Ross' affidavit to the effect that John J. Stamler, at a meeting with the Capital Securities Company, suggested that the Weinberger obligation be cancelled.

11. I deny the statements made in the various affidavits filed in this cause to the effect that I resigned from the Board of the Lebanon National Bank without the knowledge or consent of the Board of Directors of the corporate defendant in this case. Both the said Stuart C. Ross and I were members of the Board of the Lebanon National Bank. The said Stuart C. Ross resigned from said Board. Thereafter I interested some people in the purchase from the New Jersey Bankers Securities Co. of the stock of the Lebanon National Bank held by it. I requested the gentleman interested to go to the Lebanon National Bank and study the statement of that Bank. The person who was acting as the President of the Bank told him he could

not show him the statement because Mr. Weinberger had told him not to show the statement to any one. I thereupon informed the Board of Directors of the corporate defendant that I did not care to continue as a member of the Board of the Lebanon National Bank, and that I desired to resign, and received their consent to such resignation.

12. In several of the affidavits above referred to there appears a statement that I was originally employed by the defendant corporation at a salary of $7,500 per annum, and that at an alleged meeting of the Board of Directors held on January 25, 1929, upon my statement that I must have more salary or I would resign, a resolution was passed increasing my compensation to $1,000 per month, beginning February 1, 1929. It is not true that I made any such request or any such threat. It is true that my salary was increased to $1,000 per month as in said affidavit stated but such action was taken by the unanimous vote of the Board without any request on my part.

13. The said Chester Whiting DeMond in his affidavit says, in Paragraph 7 thereof, "specifically speaking I cannot from an examination of both of said reports, reconcile the amount of $845,000 by which the said assets are said to have been reduced." This has reference to the two reports, one of February 7, 1929, and one of February 15, 1929, rendered by Price, Waterhouse & Co. An examination of such reports would show that in the report of February 7, 1929, the investments of the New Jersey Bankers Securities Co. were taken at a figure of $3,380,551.98, whereas on the report of February 15, 1929, such investments were taken

at a figure of $2,875,490, making a decrease in the value of that asset of $505,061.98. It further appears that on the report of February 15, 1929, there is set up as a liability against the New Jersey Bankers Securities Co. the sum of $341,835.67, being the amount paid in for installments on account of unissued shares. These two figures make up the item of approximately $845,000, being the reduction in assets referred to in my prior affidavit.

It is significant that in the February 7th, 1929, Price, Waterhouse & Co. report, they calculate 112,800 shares of the Equitable Financial Corporation A stock to be exchanged for 455,000 New Jersey Bankers Securities Co. stock, representing the actual issued stock of 627,000, less the 172,000 shares held by Markley, which 172,000 shares were not included as also the $2,300,000 obligation of Weinberger was not included, and that only by reducing the assets of the New Jersey Bankers Securities Co. by the approximate sum of $845,000 as was done in the February 15, 1929, report, could that ratio of four to one be maintained.

14. Several of the affidavits state that the letter sent out by me under date of April 1, 1929, contained misleading statements. I deny that there are any statements contained in the said letter which are not true, or which are misleading. Said statements made by me are an accurate representation of the affairs of the company.

ABRAHAM JELIN.

Sworn and subscribed to before me this
15th day of April, 1929.

MAX M. ALBACH,
Master of Chancery of N. J.

Reasons.

IN CHANCERY OF NEW JERSEY.

BETWEEN

SOLOMON BERNSTEIN,

Complainant,

and

NEW JERSEY BANKERS SECURITIES CO., a corporation, et als.,

Defendants.

For complainant, MESSRS. LEBER & RUBACK.

For defendants, MESSRS. COLLINS & CORBIN.

BACKES, *Vice-Chancellor.*

The directors of the New Jersey Bankers Securities Company agreed, subject to the approval of two-thirds in holdings of its stockholders, to exchange all its tangible assets, with a single exception, for 152,349 shares of preferred stock, known as Class A, non-voting, of the Equitable Finance Corporation of New York, which would yield to the Bankers Co. one share of the Equitable for every shareholders four shares in the Bankers. The bill charges that the exchange is in effect a merger and ultra vires, and that it is unfair and inequitable, in that an exchange on a true value basis should yield 229,515 shares of the Equitable. A meeting of the stockholders was called to ratify the agreement. On the filing of the bill an order to show cause issued with a temporary restraint against carrying the agreement into effect, and

later another against holding the meeting. Counself furnished the Court with their affidavits before the hearing day and at the hearing, for reasons then stated and some unspoken but hereafter given, the Court announced (the defendants having filed their answer) that hearing on the rule should be continued to final hearing, and for that purpose would give an early day and set the cause down for May 23, to which Mr. Markley, counsel for the defendant, expressed entire satisfaction. He has the reporter's notes. The meritorious questions were not considered. Notwithstanding his acquiescence in the course he has appealed from the order of continuance which carries the restraint against consummating the deal but lifts the embargo on the ratification meeting. After the hearing was adjourned counsel together prepared the form of the order and upon presentation at side bar Mr. Markley stated that he did not wish to be regarded as consenting to the order. Thinking that he desired to relieve himself of criticism from his client, if any, and to pass it on to the Court, the Court acquiesced. Had he expressed himself as dissatisfied or intimated a desire to proceed the hearing would have been resumed, but not on the affidavits alone. The underlying circumstances were such as to warrant a cross examination of the affiants for fuller information than that furnished by the affidavits, and that would have been the course. That information it was hoped would be forthcoming in an open court hearing of witnesses. The Court's purpose in continuing the hearing to final hearing was two-fold: to protect the directors against a responsible misstep possibly induced by the same sinister influence that beguiled some

of their predecessors into a confidence which permitted others to loot the company and despoil the stockholders; and to insure the fifteen thousand stockholders a fair and equitable exchange and protect them against a possible second raid, of which there were some ear marks.

After the disclosure before a legislative committee which investigated the affairs of the Bankers Co. and the activities of Harry Weinberger, its promotor, a bill was filed for a receiver of the company in which the directors were charged with serious misconduct in corporate management; and particularly Weinberger, the master mind, who ran riot with the company's finances and is still at large. The Court sat in that case and is fully informed of the then situation. The suit was eventually discontinued upon a reorganization of the directorate and the election of the present board, the individual defendants in this action, and after Weinberger agreed to purchase 172,034 shares of the company's stock and thereby restore to its treasury $2,500,000. This, by paying $200,000 in cash and giving his note for $2,300,000 secured by collateral and a guarantee to the extent of $50,000 by each of the members of the old board responsible for the debacle. The 172,034 shares are part of the collateral and in Mr. Markley's hands as trustee to vote them in the interest of the company.

As to the exchange: The Bankers have assets of $8,792,513.69, book value, which for exchange purposes were cut down to $5,558,584.14. The exchange values were calculated on average bid and ask quotations of the stocks of the two companies. Neither is on an Exchange. It is a moot question whether this or true book values of the

respective companies is an equitable basis of exchange. It would seem that the moribund Bankers is at a disadvantage and it is suggested as to the Equitable, that the market is sometimes rigged. Mr. Jelin, until recently the managing director of the Bankers, estimates the loss to his institution at $1,500,000 and in calculating the assets of the two companies at their book value arrived at the result of 2.8 shares of the Bankers for one share of the Equitable, as against four for one on quoted prices; and he also points out what he regards as an unfair and apparently arbitrary reduction of $850,000 in assets value of the Bankers for purposes of the trade. It also appears in the proofs, by way of supporting the charge of unfairness of the exchange, that Weinberger initiated and negotiated the deal with one Spielberg, who controls the Equitable, and that in the first proposition of exchange, submitted by a public accountant, as advisor, the $2,300,000 note of Weinberger was disregarded as an asset in arriving at the exchange ratio of four to one, and that in the second, made within a week, the note was taken into account at its face value and by a readjustment of the values of the other assets of the Bankers the exchange ratio remained the same, four to one. And further, in the formal agreement submitted to the stockholders for ratification it is stipulated as a condition precedent that Weinberger's written assent should be procured to the Bankers transferring his $2,300,000 note. These things give pause. The Court at this time has no comment to make as to the fairness or unfairness of the contract. It may be highly beneficial to the

stockholders that the exchange be made, and it may be disastrous. The Court makes no criticism of the directors' conduct, treating them at this time as having acted in good faith, but the Court wants to be shown. It is not unmindful that ordinarily it is not the business of the Court to interfere with the management of the internal affairs of corporate bodies in the absence of fraud, but it must be observed that the present transaction is not the ordinary business of the defendant company but is what may be called a bulk sale and to all practical purposes a merger and as to this the stockholders are entitled to the fullest discovery and protection against their trustees, the directors, in a situation where they collectively have such vast sums at stake.

The fact that the complainant has but a small holding is not overlooked, but that is irrelevant in view of the 15,000 shareholders for whose protection the bill is filed and who have already suffered losses of millions of dollars. Under the manipulation of the market by Weinberger aided by an ornate and supine Board of Directors the stock sold as high as $17.50 per share; today the shares are selling at five and six dollars.

The speeding up of the cause was thought to be to the advantage of all concerned. Query, Is there something concealed that ought to be revealed?

New Jersey Court of Errors and Appeals

Between SOLOMON BERNSTEIN, *Complainant-Respondent,* *and* NEW JERSEY BANKERS SECURITIES CO., a corporation, *Defendant-Appellant.*	*On Bill, etc.* *On Appeals from Orders in Chancery.*

BRIEF OF COMPLAINANT-RESPONDENT.

Appellant has brought up for review three orders of the Chancellor, entered on the advice of Vice-Chancellor Backes. The orders are as follows and will be in this brief dealt with in the following order:

1. An INTERLOCUTORY Order entered on August 8, 1929, appointing Equity Receivers over the property of the defendant company, *reserving for future determination complainant's application for a perpetual injunction against the defendant and its officers exercising its corporate franchise and for the appointment of Receivers in accordance with the General Corporation Act of the State of New Jersey.*

2. An Order entered on June 24, 1930, denying the application of a certain group of men, claiming that they constituted a newly elected Board of Directors of the defendant company and in its name seeking the termination of the equity receivership and the discharge of the Equity Receivers and the turning over to that group of the money and good assets in the hands of the Receivers, amounting to approximately $1,700,000.

3. An Order entered July 1, 1930, granting and awarding to the Receivers and their counsel payment on account of the services rendered by them respectively.

The Order of August 8, 1929, appointing Equity Receivers, was entered upon the conclusion of a prolonged hearing before Vice-Chancellor Backes after service upon the officers of the defendant company of the Bill of Complaint and the Order to Show Cause advised on July 25, 1929. Throughout such hearing the defendant appeared and was represented by Collins & Corbin, its solicitors. Messrs. Ward & McGinnis and Messrs. Weinberger & Weinberger appeared as solicitors for what was claimed to be a board of directors of the defendant company and also as counsel for Harry H. Weinberger, a stockholder. All counsel appearing in opposition to complainant's suit actively participated in the conduct of the hearing, cross examining witnesses, making objections and engaging in argument. **THE JURISDICTION OF THE CHANCELLOR WAS NOT QUESTIONED, NOR DID THE DEFENDANT COMPANY OR THE REMNANTS OF ITS BOARD OF DIRECTORS OR SUCH OF ITS STOCKHOLDERS AS WERE ACTIVE IN THE MATTER, OFFER ANY DEFENSE.** In fact, very little was said in opposition to the appointment of Receivers, equity or statutory, but by far the main, if not the sole effort of the defendant and the others appearing in opposition to the complainant, was to secure a speedy reopening of the Hobart Service Trust Company, which had been closed on July 24, 1929, by the Banking Commissioner of the State of New Jersey, and which closing was the last of a long chain of occurrences in the life of the defendant company impelling the complainant to

seek relief from the hand of the Chancellor. The pertinency of the fact of the closing of the Hobart Service Trust Company is indicated elsewhere below in this brief where the facts are presented in greater detail.

After the appeals now before the Court were taken in behalf of the defendant company, the appellant Ginsberg gave notice that he, in the capacity of a stockholder of the defendant company, appealed from the same three Orders which are the subject of the company's appeal. The State of the Case furnished by that appellant contains only the notice of appeal and the petition of appeal and makes, by reference, the entire State of the Case of the company's appeal a part of his State of the Case. Ginsberg's State of the Case refers to the company's appeals as "companion appeals." We shall indicate in the course of this brief a fact found by the Court below that Ginsberg's companion appeal was inspired by the same group of men who seek to wrest the trust from the Court of Chancery and subject it to those purposes which the Chancellor would not deem for the interests of the stockholders. The appellant Ginsberg never appeared either in person or by counsel at any of the numerous hearings held in this cause, of which notice was duly given to all the stockholders of the company. Neither did he appear in person or by counsel upon the return of an Order entered by the Chancellor on April 29, 1930, requiring the stockholders and creditors of the defendant company to show cause why the company and its officers and agents should not be perpetually restrained and enjoined from exercising the company's privileges or franchises and why Statutory Receivers should not be appointed under the "Act Concerning Corporations." Of this

Order to Show Cause the appellant, Ginsberg, had due notice as had the 13,000 stockholders of the defendant company, a copy of said Order being mailed to each stockholder and creditor of the company and being served also upon the solicitor appearing for the company itself and its alleged board of directors. Upon the return of the aforementioned Order to Show Cause of April 29, 1930, Vice-Chancellor Backes, in accordance with the reservation contained in the Interlocutory Order of August 8, 1929, continued the summary hearing and the taking of proofs for the purpose of determining whether the factual situation found to have existed at the time of the filing of the bill had so changed in the interim of nine months as to make it advisable and for the best interests of the stockholders and creditors to turn over the trust estate, then in the hands of the Court's Receivers, to a group of men who prophesied that notwithstanding the lamentable history of the company and its colossal losses they could cause the fund to increase and multiply where all their predecessors had failed. The hearings on said Order to Show Cause were extensive and thorough. Both sides offered proofs and the Vice-Chancellor had before him in person several of the men who claimed to be newly elected directors and who sought as such the control of the estate. At the conclusion of these hearings the Court, by its Final Decree, appointed Statutory Receivers. The reasons which made this judicial course imperative are amply set forth in the three opinions of Vice-Chancellor Backes rendered in this cause. (See opinion of August 8, 1929, at page 61, State of Case, opinion of May 29, 1930, at page 65, and reasons on appeal at page 596.)

After Vice-Chancellor Backes had in the presence of defendant's counsel instructed complainant's solicitor to present an order to show cause why statutory receivers should not be appointed, Mr. Isadore Glauberman, who had been substituted for Messrs. Collins & Corbin as solicitor for the defendant, gave notice of appeal from the Chancellor's interlocutory order of August 8, 1929. Notwithstanding the taking of this appeal he appeared before Vice-Chancellor Backes on the return of the order to show cause of April 29, 1930, and he actively participated in the hearings held on May 13th, 15th and 29th, cross examining complainant's witnesses and calling and examining a large number of witnesses in behalf of the defendant company. In his efforts he was assisted by Harry H. Weinberger, who appeared in his own behalf as a stockholder. The final decree appointing statutory receivers was entered on May 29, 1930. Thereafter on July 17, 1930, Glauberman, in behalf of the defendant company, took the appeals from the orders of June 24, 1930, and July 1, 1930. Ginsberg's appeal was taken in August of 1930. *No appeal was taken from the Chancellor's final decree of May 29, 1930, and Glauberman stated in open court, before Vice-Chancellor Backes, that he did not intend to review the final decree.*

Respondent has given notice of a motion before this court to dismiss so much of the appeal as relates to the Chancellor's order of August 8, 1929, and this on the following grounds:

1. That the appeal is from an interlocutory order and was not taken within the time required by statute.

2. That the interlocutory order appealed from has been superseded by the Chancellor's final decree of May 29, 1930.

An intelligent discussion of the questions raised by these appeals requires that the Appellate Court have before it the full record of the cause in the court below, both at the time when the equity receivers were appointed in August of 1929, and the time when the statutory receivers were appointed in May of 1930. Our adversaries have seen fit to impoverish the record on appeal by omitting, over our objection, from the printed State of the Case the following exhibits received and marked in evidence (the first three items being exhibits marked in evidence during the hearing of August 8, 1929):

A. *Complainant's exhibits omitted:*

(1) Exhibit "C. 1," being the report of the Examiners of the New Jersey Department of Banking and Insurance (State of Case, page 167).

(2) Exhibit "C. 3," being the minute book of the defendant company (State of Case, page 172).

(3) Exhibit "C. 9," being the books of the defendant company (State of Case, page 231).

(4) Exhibit "C. 12" of May 13, 1930, being the audit of the defendant company made by Arnold Markel & Co. and dated August 31, 1929.

(5) Exhibit "C. 13" of May 13, 1930, being the letter of Charles Ryan and others addressed to stockholders, dated November 12, 1929.

(6) Exhibit "C. 14" of May 13, 1930, being the proceedings and record of the Court of Chancery in the case of Fannie Mayer *v.* New Jersey Bankers Securities Co. (Chancery docket 69, page 152).

(7) Exhibit "C. 15" of May 13, 1930, consisting of the record and proceedings in the Chancery suit of Solomon Bernstein *v.*

New Jersey Bankers Securities Co., Case No. 1 (Chancery docket 73, page 84).

(8) Exhibit "C. 2" of May 29, 1930, being the minutes of the stockholders' meetings held on January 14, 1930, and January 16, 1930.

Defendant's exhibits omitted:

(9) Exhibit "D. 1," Receivers' letter and statement of March 7, 1930.

(10) Exhibit "D. 2," Tabulation of postal card returns.

(11) Exhibit "W. 1" (Weinberger 1), Stamler's letter of July 30, 1928.

(12) Exhibit "W. 2" (Weinberger 2), Stamler's letter of July 31, 1928.

(13) Exhibit "W. 3" (Weinberger 3), Stamler's letter of August 23, 1928.

(14) Exhibit "W. 4" (Weinberger 4), Stamler's letter of September 7, 1928.

(15) Exhibit "D. 3," letter and proxy sent by Augenblick group.

(16) Exhibit "D. 4," proxies for 60,000 shares offered by Glauberman.

(17) Exhibit "D. 5," Ryan proxies.

(18) Exhibit "D. 6," minutes of directors' meeting.

(19) Exhibit "D. 7," resignation of Edward A. Markley.

B. *Pleadings and proofs omitted from State of Case:*

(1) Order entered by the Chancellor on April 29, 1930, upon the advice of the Honorable John H. Backes, directing the defendant company and its stockholders and creditors to show cause on May 13, 1930, why statutory receivers should not be appointed.

(2) The affidavit of the mailing of the foregoing order to show cause (Item 1) to stockholders and creditors.

(3) The testimony taken before Vice-Chancellor John H. Backes under said order to show cause, such testimony having been taken on May 13, 1930, May 15, 1930, and May 29, 1930.

(4) The final decree appointing statutory Receivers and granting injunction, entered in the cause by the Chancellor on May 29, 1930.

(5) All the pleadings and proofs on file in the cause pertaining to the sale by the Receivers of the defendant company of the shares of stock owned by it in the Hobart Service Trust Co.

(6) All the pleadings, proofs and proceedings on file in the cause pertaining to the sale by the Receivers of the shares of stock owned by the defendant company in the Perth Amboy National Bank.

(7) All the pleadings, proofs and proceedings on file in the cause pertaining to the sale by the Receivers of the shares of stock owned by the defendant company in the Lebanon National Bank of New York.

(8) All the pleadings, proofs and proceedings on file in the cause relating to the litigation between the Receivers and Broomhall-Killough Co., touching and concerning the shares of stock owned by the defendant company in the Bank of Manhattan Co.

(9) The testimony of Harry H. Weinberger concerning his financial responsibility, which testimony was taken by the Receivers before Philip J. Schotland, one of the Special Masters in Chancery.

(10) All other pleadings, proofs and documents on file in the cause appertaining to the administration of the trust by John J. Stamler and Nicholas LaVecchia, as Equity Receivers, from July 25, 1929, to May 29, 1930 (the date of their appointment as Statutory Receivers) and of their administration of the trust as Statutory Receivers from May 29, 1930, to the date hereof.

(11) The testimony of John J. Stamler taken before Vice-Chancellor John H. Backes on June 24, 1930, concerning the services of said John J. Stamler as Receiver of the defendant company.

Due notice was given of our objections to the State of the Case. At the time of the writing of this brief the State of the Case had not been supplemented with the omitted exhibits, pleadings and proofs, nor are we in possession of many of these exhibits borrowed from us by the appellant's solicitor for purposes of printing, and neither printed nor returned to us notwithstanding constant demand therefor. We assume that the State of the Case will be perfected and we are obliged, on that assumption, to make reference to exhibits, proofs and pleadings not yet in the printed case and with respect to which we are, therefore, unable to make reference by page number.

Our adversaries have indulged themselves in their brief in *a much distorted* narration of the history of the company from the date of its organization down to the present time, even while they have omitted from the State of the Case the major portion of the proofs and exhibits which were in evidence before Vice-Chancellor Backes and which, if fully disclosed before this Court, would enable it to see the circumstances that impelled the Chancellor to appoint Equity Receivers in the first instance and Statutory Receivers eventually. We shall in this brief present as briefly as possible the *full* history of the company, starting with its conception in the mind of Weinberger and proceeding through the period of its "market rigging" activities before the investigation of its affairs by the Davis Legislative Committee, then dealing with its experiences before that Committee, its litigation in the Court

of Chancery in the stockholder's suit brought by Fannie Mayer, its litigation in the Bernstein suit No. 1, brought to prevent a turning over of all its assets to a New York group, the closing of the Hobart Service Trust Company and its two banking branches (which company the defendant controlled by the ownership of more than 75% of the outstanding stock) and *all* of the proceedings in this cause before Vice-Chancellor Backes. We think that it is of the utmost importance that this appellate court have before it the entire record in the court below, undeleted and unsuppressed, so that this court, and not partisan counsel, shall determine what facts are evidential in the cause and necessary to invoke the law governing this case. Once the facts are honestly disclosed, and honest disclosure means full disclosure, the legal principles applicable will be few and simple.

HISTORY OF THE COMPANY, ITS OPERATIONS, LOSSES AND LITIGATION.

The defendant, New Jersey Bankers Securities Company, was promoted by one Harry H. Weinberger. It was incorporated on August 19, 1927, under the General Corporation Laws of New Jersey, with broad powers to deal in various kinds of securities, real and personal property, and to engage in financial and other enterprises. Its principal office in New Jersey was designated as the Service Trust Company Building, Passaic, New Jersey, where Weinberger had his law office, and where he also functioned as the president of the Service Trust Company, a bank largely owned and controlled by him. The certificate of incorporation of the defendant company designated Weinberger as its statutory

agent. The incorporators, three in number, were dummies selected by Weinberger (see Exhibit C. 14, consisting of the proofs and record in the Chancery suit of *Fannie Mayer* v. *New Jersey Bankers Securities Company,* Chancery Docket 69, page 152, which exhibit appellants have refused to print) for the launching of the enterprise, and these dummies subscribed in the aggregate for ten shares of the authorized no par stock. The charter authorized the issuance of 300,000 shares of common stock without par value. The first meeting of the three incorporators was held at Weinberger's office on August 26, 1927, Jackovics acting as chairman, and Miss Lentz, of Weinberger's office, acting as secretary. The main business of the meeting was to consider the offer of Harry Weinberger to sell to the company the following property:

1. 2,100 shares of stock of Service Trust Company of New Jersey, a Passaic bank organized by Weinberger, of which he was president and in which he was the principal stockholder.

2. 2,000 shares of stock of the Hobart Trust Company.

3. 1,100 shares of stock of Equitable Title & Mortgage Guaranty Company, a company theretofore organized by Weinberger.

Weinberger's offer to sell the foregoing was in consideration of the New Jersey Bankers Securities Company issuing and delivering to him 250,000 shares of its authorized no par stock. The stockholders, by resolution, approved "the acquisition of certain banking institutions and stock thereof, as set forth in his (Weinberger's) offer" and did recommend to the company's board of directors (not yet in existence) "for their adoption and approval, the acquisition of the several banks, etc.," and that "it is feasible

and advisable that the Board of Directors immediately purchase and acquire the following shares of stock of the institutions named, to wit:''

Enumeration of the aforementioned shares offered by Weinberger. (See minute book, Exhibit C. 3, minutes of organization meeting.)

The three dummy incorporators elected themselves at that meeting directors of the company for one year. These directors immediately went into session and elected Jackovics president, Miss Lentz secretary, and Joseph Roberts treasurer of the company. The directors forthwith proceeded to approve a Six Thousand Dollar bill of Weinberger ''for legal services rendered and expenses incurred by them in and about the creation and organization of the corporation.'' At this meeting Roberts, Lentz and Jackovics, although elected directors and officers within that hour, resigned as directors and officers and a board was elected consisting of Frederick N. Bidwell, David G. Smith, Harry Weinberger, James F. Minturn, John Roegner, Edward I. Edwards, and William W. Evans. Harry Weinberger was at this meeting elected president of the company. These newly elected directors at once appeared and participated in the meeting. Thereupon, Mr. Edwards was made acting chairman of the Board of Directors and Mr. Minturn was elected vice-president of the company. The newly elected board at once proceeded unanimously to approve and accept Weinberger's offer to sell his aforementioned holdings in the Service Trust Company, the Hobart Trust Company and Equitable Title & Mortgage Guaranty Company for the consideration of 250,000 shares of the no par stock of the defendant company. The Board in its resolution declared that what Weinberger offered to sell was reasonably and fairly worth the 250,-

000 shares of no par stock of the defendant company, based upon a valuation of at least Ten Dollars per share for the defendant company's stock. (See directors' minutes of August 26, 1927, Exhibit C. 3, not printed by appellant.) In other words, the newly elected Board, within the hour of their election, appraised the stocks that Weinberger offered to sell at an aggregate value of at least Two Million Five Hundred Thousand Dollars.

At a meeting held on September 8, 1927, the board was increased by the addition thereto of three new directors, viz: Frank Campbell, Edward L. Schoen, and William Harris. At this meeting a committee of directors was appointed to attend to the matter of amending the certificate of incorporation of the company so as to permit an increase of the capital stock of the company from 300,000 shares to 2,000,000 shares, and by such amendment also to permit and enable the company to buy and sell its own stock, and a further provision that the board of directors of the company shall not consist of less than seven and not more than twenty-five directors. (See minutes of this meeting contained in Exhibit C. 3.) At this meeting the board also, by resolution, bound the company to buy from Harry Weinberger 150,000 shares of the company's stock at Ten Dollars per share, and granted to him an option to sell him 150,000 shares at the same price upon the capital of the company being increased from 300,000 to 2,000,000 shares.

The newly elected board of directors, at a meeting held on September 15, 1927, moved the amendment of the certificate of incorporation of the company in the respects aforementioned, increasing its total authorized capital stock to 2,000,000 shares of no par value, and amongst other things,

provided that the company might use and apply its capital, or its surplus earnings, or its accumulated profits, to the purchase or acquisition of its own capital stock, in such manner and upon such terms as the board of directors shall determine. The amendment also provided that the directors "shall be no less than five nor more than twenty-five in number, and the number shall also be in multiples of five."

The foregoing amendments, approved by the directors, were accomplished on September 29, 1927, by the filing of a certificate of amendment in the office of the Secretary of State.

At said meeting of September 15, 1927, in anticipation of the amendment increasing the authorized capital stock of the company, the directors resolved that the company issue 300,000 additional shares at Fifteen Dollars and Fifty Cents per share to stockholders of record, at Sixteen Dollars and Fifty Cents to depositors of certain banking institutions, and to the public at large at Seventeen Dollars and Fifty Cents per share.

On September 14, 1927, a contract was executed between the company and Harry Weinberger, by which he sold unto it 150,000 shares of the company's no par stock at Ten Dollars per share, and the company granted him the right of purchasing a like number of shares within one year at the same price. The company also agreed that in addition to the aforementioned 150,000 shares, it would sell to Harry Weinberger, or to any corporation to be formed by him, 500,000 shares of the increased capital stock at Twelve Dollars and Fifty Cents per share, and this at any time within eighteen months from the date of the meeting. (We mention the foregoing to indicate Weinberger's large personal interest and contingent

profits if the market for the company's stock were "rigged" and the shares passed on to the public at large.)

At the time the directors, on August 26, 1927, agreed to purchase from Weinberger, for the lump consideration of Two Million Five Hundred Thousand Dollars, the three stock items above enumerated, they allowed and paid for the 2,000 shares of the Hobart Service Trust Company the sum of One Million Seven Hundred Ninety-Nine Thousand Dollars, paying at the rate of Eight Hundred Ninety-Nine Dollars and Fifty Cents per share. At the time this purchase was approved, the officers and directors knew that Weinberger had agreed to purchase those 2,000 shares only two weeks before at Six Hundred Fifty Dollars a share, and that he hadn't paid for those shares of stock and that no change in the value of the stock had occurred within those two weeks. On this one item alone the directors and officers of the defendant company consciously and deliberately permitted Weinberger to make and retain a profit of Four Hundred Ninety-Nine Thousand Dollars. Weinberger was unable to pay for those shares of stock with his own funds, and thereupon the officers and directors of the defendant company permitted its corporate funds to be used for the purpose of enabling Weinberger to pay for the stock, the company merely charging the amount thereof against its running account with Weinberger.

Immediately upon the capital stock of the company being increased from 300,000 to 2,000,000 shares, the stock was offered to the public and a salesmanship campaign was inaugurated. Offices were established in New Jersey, New York, Maryland and other places. A large force of

so-called "high pressure salesmen" was employed and a very intense advertising program was inaugurated and pursued, purchases of the company's stock being solicited through the mails, the telephone, advertisements in the newspapers and personal solicitation throughout this section of the country. A plan to sell stock on the installment plan was adopted and employed. Large commissions were paid to the soliciting and selling agencies and the financial achievements of the company and its prospects were falsely portrayed before the public. A subsidiary or allied corporation of the defendant, known as the New Jersey Continental Bank Shares Corporation, conducted a publicity campaign to the end that the public should buy more and more of the company's shares. A bulletin issued by that company under date of May 29, 1928, called "News Bulletin No. 1," contained information misleading to the average investor. By this date the company had already bought controlling interests in a few small banks. The information disseminated by the stock selling subsidiary gave to the public the impression that the resources of the banks controlled by the defendant company aggregated approximately $212,000,000. The fact was that such banking resources did not exceed the sum of $20,000,000. The public was gullible. It succumbed to the efforts of high pressure salesmen and there rolled into the treasury of the company the sum of $7,841,797.57, representing capital actually paid in (including the installments actually paid on account of stock subscriptions). In order to keep the appetite of the public for this stock on edge and to stem from time to time the ebb of public interest, and in order to "lift" and "peg" the market, the company and its officers and directors did and suffered to be done the following:

(a) To furnish to the public a more attractive financial landscape the assets of the several banks controlled by the defendant company were revalued and the values increased thereby reflected additional resources "on paper." In its balance sheet of January 31, 1928, issued to its stockholders, it set forth that it had earned, through operations, the sum of $37,818.41 and that the company's surplus had increased, through "appreciation in value" of assets to the extent of $1,335,578.81.

(b) The company dealt extensively in its own stock, selling it with one hand and buying it back immediately with the other *at increased prices.* Stock which the public bought from the company at $12.00, $13.00 or $14.00 a share was almost immediately repurchased by the company from the public, through brokers, at various prices ranging between $14.00 and $18.00 a share. THIS WAS DONE CONSTANTLY AND DAILY WITH THE AFFIRMATIVE APPROVAL OF THE BOARD OF DIRECTORS AND THE QUANTITY OF STOCK THUSLY RE-PURCHASED WAS ENORMOUS, RESULTING IN A LOSS IN THE COMPANY'S MONEY OF ALMOST $3,000,000, AND THIS IN THE SHORT SPACE OF A FEW MONTHS. These financial activities of the defendant company are manifest in its books of account and minute book, *in evidence in this case,* though not brought in by our adversaries as a part of the record on appeal, which omission we have duly objected to.

(c) The board of directors of the company formally adopted the following resolution at its meeting held on January 18, 1928:

> "Upon motion duly made, seconded and carried, it was RESOLVED that this company

> open up an account with H. W. Knoblauch & Co.,—Hirsch Lilienthal,—Baar & Cohen and Post & Flagg, and such other companies as the officers may think advisable, which account shall be a trading account and for the purpose of purchasing and selling stock of the New Jersey Bankers Securities Co. and stocks of companies in which the New Jersey Bankers Securities Company hold stock." (See Minute Book, Exhibit "C. 3.")

(d) The company declared and paid a dividend on its outstanding stock, which dividend amounted to the sum of $100,684.75. This dividend was declared at a time when the company had earned no profits and had no surplus. It was declared by the board of directors on April 4, 1928 to stockholders of record as of April 16, 1928, and payable on May 1, 1928. This dividend was declared upon the representation made by Weinberger to the board at that meeting that he had, in behalf of the company, sold 2,000 shares of the stock of Hobart Service Trust Company for the sum of $250,000, on which sale he represented that the company had made a profit large enough to cover the proposed dividend of $100,684.75. Weinberger, on April 16, 1928, delivered to the company a check for $250,000, which check, however, was never deposited to the credit of the company, nor was the check ever cashed, nor did the amount thereof ever enter the treasury of the company. The check disappeared and on or after the 26th day of April, 1928, there was entered in the cash book of the company, as of April 16, 1928, a red ink notation cancelling the check and stating no reason for such cancellation. Although on the date of cancellation the dividend had not yet been paid to stockholders, the fact of the declaration of the dividend had been published and widely broadcast. When the dividend checks

were in fact sent out to stockholders the directors and officers of the company knew that there was lacking the basis for the dividend, that the company had neither earnings nor surplus to warrant this payment and that such payment constituted a violation of law. It is a legitimate inference that payment of the dividend, under these circumstances, was persisted in so that the stock-selling and stock-trading activities of the company and of those individuals who had large blocks of stock to sell, would not be adversely affected and the stream of golden dollars into the pockets of some and out of the treasury of the company would not be stemmed or diminished.

Fabulously high prices were paid by the company for the control of banks. Those who directed or misdirected the destinies of the company were gripped by a wild passion to buy up many banks, at any price and without regard to the true basic values of the bank stocks being purchased. A comparison between the prices paid for bank stocks purchased and the prices at which they were sold by this company demonstrates that the cost to the company was shockingly inordinate. Before the bill was filed in this case its then functioning board of directors on July 24, 1929, accepted the written offer of Arthur S. Hughes and J. H. Waldron to purchase from the company at $20.00 a share the 30,140 shares of stock of the Hobart Service Trust Company, which number of shares had cost the company $82.03 a share, or an aggregate of $2,472,384.20. As against this cost the Board accepted the offer of $602,800, involving a loss (without counting carrying charges or lawful interest on capital invested) of $1,869,584.20 (see Exhibit "C. 3" Minute Book, minutes of July

24, 1929. See also Schedule 1 of securities owned, being part of Exhibit "C. 6," page 402 of State of Case).

The first day of reckoning came when the Davis Committee, constituted by action of the Legislature of the State of New Jersey, investigated the business operations of the defendant company, in the course of which investigation there were revealed the acts of corporate misconduct which distinguished the career of the defendant company up to and during the course of that Legislative investigation. The results of that investigation received wide public attention and through the disclosures appearing in the public press the stockholders *not on the inside* were informed for the first time of how their corporate trust was being handled by their trustees. Thereupon a stockholder by the name of Fannie Mayer exhibited her bill of complaint to the Chancellor setting forth the stock manipulations, the illegal dividend and other unlawful acts committed by the defendant company and its officers and directors. The bill of complaint charged that the company's "officers and directors conducted the affairs of the defendant company according to the wishes and desires of its president, Harry H. Weinberger, without exercising any independent judgment and in some instances without due investigation and consideration." Complainant in that suit sought, amongst other things, an adjudication that the officers and directors of the company had been guilty of nonfeasance and malfeasance in office and that they had violated their trust as such officers and directors and that they be removed from office by reason of their misconduct, and to restrain the defendants in that suit (who were the New Jersey Bankers Securities Co. and Harry H. Weinberger and

his associates) from exercising any powers or authority as officers and directors of the company, and that Harry H. Weinberger be compelled to account to the corporation for the profits made by him, directly or indirectly, through the use of corporate funds and from the sale to the company of property owned by Weinberger at prices in excess of the true value and that the said Weinberger be compelled to repay to the company the amount found due on such accounting. Complainant in that suit also sought to have ascertained and determined the losses sustained by the company through negligence and misconduct of its officers and directors and to determine which of the officers and directors are in law responsible therefor and to compel such persons to pay to the company the losses so sustained by it, and also to compel the officers and directors under whose administration the illegal dividends were declared to repay to the company the losses sustained by it in the impairment of its capital where such impairment was the result of an unlawful withdrawal, division or reduction of capital, and that a Receiver should be appointed over the company and its assets with a view to administer the estate for the benefit of all parties in interest. Upon that bill of complaint numerous hearings were had before Vice-Chancellor Backes and both sides offered proofs. Amongst the proofs so offered was the testimony given before the Davis Committee, including testimony given before that agency by Harry H. Weinberger and some of his associates in the operation of the defendant's business. Complainant proved in that suit that the losses resulting to the company from its manipulations in the stock market, consisting of its trading in its own stock in order to "rig" the market, amounted to the sum of $2,847,048.97,

besides an additional loss of $100,684.75 (the dividend illegally paid), making a total loss, with respect to those two items, of $2,947,733.72 (see Statement of Deficit, Exhibit "C. 4a," p. 377 of State of Case). That statement, as of August 31, 1928, analyzes the company's deficit of $780,256.25 as consisting of three items, viz.:

Operating losses	$332,522.53
Dividend declared— amount actually paid..	100,684.75
Loss on sale of treasury stock	347,048.97
Total Deficit	$780,256.25

The foregoing deficit was arrived at after deducting from the grand deficit the sum of $2,500,000, represented by a settlement made with Harry Weinberger prior to August 31, 1928, by which settlement he assumed and compromised all the liabilities alleged in the Mayer suit against himself and his co-directors and officers. The details of that settlement are given below. The proposed settlement, the proceedings thereon and its ultimate approval and acceptance are a part of the record of the Mayer suit in the Court of Chancery. The entire record in the Mayer case was part of the record in the present case, having been made so by being received and marked in evidence as Exhibit "C. 14," which exhibit complainant has not returned as a part of the State of Case herein.

While the Mayer suit was pending before Vice-Chancellor Backes and in consequence thereof the company went through what it was hoped would be a house-cleaning process. On July 17, 1928, Harry Weinberger resigned as president and director, F. N. Bidwell resigned as treasurer and

director and Frank C. Campbell resigned as director. These resignations were accepted and John J. Stamler, the president of the then Broad and Market National Bank of Newark (now the New Jersey National Bank and Trust Company), was unanimously elected president and Parker Silzer was elected a director of the company and its assistant-treasurer. Edward I. Edwards surrendered his $25,000 a year salary contract and Stamler and Silzer were authorized to cancel all leases entered into by the company and to close its New York offices (see minute book Exhibit "C. 3"—minutes of July 17, 1928).

Prior to the resignations which occurred on July 17, 1928, and as a consequence of the Mayer suit, William Harris resigned on April 18, 1928, as a director of the company.

At the directors' meeting held on August 8, 1928, the following resolution was adopted:

> "WHEREAS it appears that by unanimous action Messrs. Frederick N. Bidwell, Frank C. Campbell, Edward I. Edwards, William W. Evans, William Harris, James F. Minturn, John J. Roegner, Edward Schoen, David G. Smith and Harry Weinberger, Directors and Officers of the New Jersey Bankers Securities Company have used the funds of the Corporation for the purpose of purchasing in the open market 308,583 shares of the capital stock of the New Jersey Bankers Securities Company and paid therefor the sum of $4,622,236.00; and
>
> WHEREAS it further appears that by said unanimous action of said former officers and directors that out of the stock so purchased they sold 136,549 shares for the sum of $1,775,195.03; and
>
> WHEREAS we are advised by counsel that the aforesaid former Officers and Directors were without legal authority to use the cor-

porate funds with which to buy or trade in any of the stock of their Company, and that it is for the best interests of the stockholders that a tender be made to said Frederick N. Bidwell, Frank C. Campbell, Edward I. Edwards, William W. Evans, William Harris, James F. Minturn, John J. Roegner, Edward Schoen, David G. Smith, and Harry H. Weinberger, of the said 172,034 shares of capital stock, and demand the return and repayment to the Company of the aforesaid sum of $2,847,040.97; and

WHEREAS counsel has further advised that in the event the said former Officers and Directors of said Company refuse to accept the delivery of the said 172,034 shares of the capital stock of the New Jersey Bankers Securities Company, and return to the Company the $2,847,040.97 advanced by the Company, as aforesaid, that a suit be commenced at law or in equity to recover said sum of money.

THEREFORE, BE IT RESOLVED that the Officers of the Company be and are hereby authorized and directed to make a tender of said 172,034 shares of the capital stock of the New Jersey Bankers Securities Company to Frederick N. Bidwell, Frank C. Campbell, Edward I. Edwards, William W. Evans, William Harris, James F. Minturn, John J. Roegner, Edward Schoen, David G. Smith and Harry H. Weinberger, former Officers and members of the Board of Directors of said Company, and demand repayment to the Company of the said sum of $2,847,040.97, and that upon their refusal to accept such tender and pay said sum that counsel be and is hereby authorized and directed to commence an action at law or in equity for the recovery of said moneys and/or any other moneys that may be due and owing from said Directors and Officers to this Company."

Between the time when the foregoing resolution was passed by the Board and August 22, 1928,

Harry H. Weinberger assumed the responsibility for the corporate misconduct charged against himself and his co-directors and officers and he submitted to the board of directors of the company at its meeting on August 22, 1928, an offer of settlement which the board at that meeting resolved to accept and which offer, set forth in the resolution of acceptance, was as follows:

> "Without prejudice to my rights, and for the purpose of effectually and completely compromising and settling any and all claims, liabilities, actions and proceedings of every nature and description by the said New Jersey Bankers Securities Company, and its stockholders, against me and the Directors and former Directors of said Company, hereinafter named, I make the following offer to the New Jersey Bankers Securities Company, subject to the approval of the Court, and upon notice to the Stockholders of the Company:
>
> "I hereby agree to purchase 172,034 shares of the capital stock of the Company for $2,500,000.00 payment to be made as follows:
>
> "$100,000.00 in cash or certificate of deposit of a bank approved of by the President of the Company. This cash or certificate of deposit is to be held in escrow until the acceptance of this offer is consummated by the approval of the Court.
>
> "Another $100,000.00 in cash, payable when this offer is approved by the Court and the acceptance of this offer is consummated.
>
> "My note for the balance, $2,300,000.00 payable on or before three years from its date, said note to bear interest at two per cent. per annum on all unpaid balances, beginning 18 months after this date. Said note to be given when your acceptance of this offer has received the approval of the Court and said aproval has been consummated. To secure said note the New Jersey Bankers

Securities Company is to hold the following securities as collateral:

"A mortgage covering the Biltmore Apartments, at Passaic, New Jersey, for $200,000.00; an assignment of a mortgage of $100,000.00 held by me on the Gregorian Court Apartments, at Passaic, New Jersey, and 1,000 shares of the capital stock of the Hobart Service Trust Company, and 16,000 shares of the capital stock of the New Jersey Bankers Securities Company, and the assignment of $200,000.00 worth of life insurance policies on my life.

"The said New Jersey Bankers Securities Company, shall release from time to time, upon my demand, any or all of the said 1,000 shares of the Hobart Service Trust Company stock put up as collateral by me, on payment of $80.00 per share.

"The said New Jersey Bankers Securities Company will likewise release from time to time upon my demand, any or all of the 16,000 shares of the capital stock of the New Jersey Bankers Securities Company put up as collateral by me, on payment of $10.00 per share.

"The said New Jersey Bankers Securities Company will likewise release from time to time, upon my demand, any or all of the said 172,034 shares of the capital stock of the New Jersey Bankers Securities Company which I hereby agree to purchase, upon payment of $14.50 per share.

"The said New Jersey Bankers Securities Company will also release or assign upon my demand the said mortgage on the Biltmore Apartments upon payment of $200,000, and the reassignment of said mortgage of $100,000 on the Gregorian Court Apartments put up as collateral by me upon payment of said moneys.

"The said New Jersey Bankers Securities Company is also to release all of said 172,034 shares of stock and all of said collateral at any time upon payment by me or in my be-

half of the note of $2,300,000.00, and interest as herein provided, it being the understanding that in no event am I to pay more than $2,300,000.00, and interest as aforesaid, and that when said sum has been paid I am to receive a release of the said 172,034 shares and all of said collateral and the return of my said note for the sum of $2,300,000.00.

"The said New Jersey Bankers Securities Company is to issue the certificate or certificates of stock for the said 172,034 shares of the capital stock of the New Jersey Bankers Securities Company in the name of Edward A. Markley, of the law firm of Collins and Corbin; the same to be endorsed by him in blank, to be held by the New Jersey Bankers Securities Company, as security for the said note of $2,300,000.00 with the right of said Edward A. Markley to vote said stock for the best interest of said New Jersey Bankers Securities Company.

"The said New Jersey Bankers Securities Company to accept this offer in full and complete satisfaction of any and all claims against me or the following Directors or former Directors of the said New Jersey Bankers Securities Company:

Frederick N. Bidwell	James F. Minturn
Frank C. Campbell	John J. Roegner
Edward I. Edwards	Edward Schoen
William W. Evans	David G. Smith
William Harris	Harry H. Weinberger

and upon consummation of the acceptance of this offer general releases are to be given to each of said Directors of the Company.

"The said New Jersey Bankers Securities Company is also to agree as one of the considerations of this offer by me, to indemnify and secure me and said Edward I. Edwards and William Harris, from any and all liability upon me and for their guarantee in connection with the contract for the purchase of the Journal Square National Bank.

"In the event said Edward A. Markley shall desire to be relieved from holding and voting the 172,034 shares or any part thereof if such holding is reduced as herewith provided, he shall have the right, upon notice in writing to the Board of Directors of this Company, to resign said right, and the Board of Directors in that instance, together with me, shall select a new person to hold and vote said stock in place of said Edward A. Markley in accordance with the terms herein stated.

Yours very truly,
(Signed by) HARRY H. WEINBERGER."

At that meeting the board authorized the president, Mr. Stamler, to speak for the directors in the fixing of compensation of all counsel in the Mayer case, an expression from the company's directors having been requested by Vice-Chancellor Backes.

At the meeting held on September 5, 1928, the board of directors elected Mr. Abraham Jelin, vice-president and general manager of the company, to serve for a period of one year at a salary of $7,500.00 per annum, payable monthly. Resolutions to amend the charter of the company were passed, amongst which amendments was one reducing the maximum number of the board from twenty-five to fifteen, and providing that the board shall consist of no less than five nor more than fifteen directors.

At the annual stockholders' meeting held on September 21, 1928, the stockholders resolved to ratify and confirm the agreement made between the directors of the company and Mr. Harry H. Weinberger, settling all controversies between the company and Weinberger and the other directors of the company. Said agreement con-

sisted of the written offer made as aforementioned by Weinberger to the Board of Directors of the company and by its directors accepted. At that meeting the following directors were elected for the following terms:

Officers	Number of Yrs.	Number of shares
Edward I. Edwards	5 years	211,997
Bernard L. Stafford	3 years	212,297
John J. Roegner	4 years	212,297
Robert Armstrong	4 years	212,297
George E. Morrissey	3 years	212,297
William W. Evans	3 years	212,297
James F. Minturn	2 years	212,297
Stuart C. Ross	2 years	212,297
Abraham Jelin	1 year	212,297
John F. McCormick	1 year	212,297

As a result of the resignations above mentioned and of the settlement made with Weinberger, the pending litigation before Vice-Chancellor Backes was discontinued, *the Court making such allowances to counsel in the cause as the board of directors, speaking through the president, Mr. Stamler, recommended. At a meeting of the board of directors of the company, held on October 4, 1928, the fees theretofore allowed by Vice-Chancellor Backes to counsel in the Mayer suit (the amount of which fee allowances had theretofore been fixed by the board of directors of the company and communicated in open court to Vice-Chancellor Backes by the president of the defendant company) were approved and ordered paid.* The following record appears in the minute book of the company (Exhibit C. 3):

"Upon motion duly made and seconded, it was agreed that the fees allowed and directed by the Court in the recent litigation be paid to the following:

Stein, McGlynn & Hannoch	$50,000.00
Collins and Corbin	20,000.00
McCarter and English	10,000.00
Morris E. Gordon	150.00
Avidan and Avidan	150.00
William S. Cantalupo	150.00
Cohn & Cohn	150.00
Total	$80,600.00"

Mr. Stamler was president of the company for but a few months, during which time he compelled Weinberger to make the aforementioned settlement, and he helped to eliminate the corrupt conditions theretofore existing within the company and to reduce very substantially the tremendous and wasteful overhead that the company was under because of many leases, a large force of stock salesmen, and a Twenty-Five Thousand Dollar a year salary to a president whose only real function was to preside at board meetings. These results produced by Stamler were the result of many conferences with and the ultimate co-operation of Mr. Robert H. McCarter, the firm of Collins and Corbin, and the many other counsel appearing in the Mayer case, both in opposition and in defense of the company. Weinberger's settlement, the resignation of some directors and the election of others, and all the details of what our adversaries call a "re-organization," but which we rather regard as a well-intended but unsuccessful "house cleaning," were laid before the Court. The Court gave its approval. For auught that then appeared the cancerous condition had been cut away, and it was hoped that those members of the old offending board, who had not been dismissed, would,

in co-operation with the newly-elected directors of the company, be mindful of their trust and give to the company a reasonable measure of intelligence and a full measure of devotion.

Mr. Abraham Jelin took charge of the business of the company on September 21, 1928, as its vice-president and general manager. He functioned as such for about seven months and until about April 1, 1929. The company's business, in the main, consisted of what it was organized for, viz.: holding bank securities. Mr. Jelin did take a few small "fliers" in the market, and made for the company, for this period of seven months, an operating profit of Thirteen Thousand Nine Hundred Eighty-Four Dollars and Eighty-Three Cents. With an invested capital of Eight Million Dollars, the activities of the company, consisting of owning, buying and selling bank stocks, produced a so-called operating profit of only Thirteen Thousand Nine Hundred Eighty-Four Dollars and Eighty-Three Cents. This profit for the seven-month period of the Jelin regime was the only time in the company's history when a profit was *ostensibly* made. In fact, even that profit is imaginary, for while that profit was resulting from the collection of dividends and interest, and the purchase and sale of a few securities the bulk of the securities held by the company shrank in value, during the first five months of the Jelin seven-month regime, to the extent of One Million Four Hundred Two Thousand Eight Hundred Three Dollars and Seven Cents. (See testimony of witness Braverman, pages 204 to 223, State of Case. See also statement, Exhibit C. 7, at page 411 of the State of the Case, and Price Waterhouse report, Exhibit C. 1, page 438 of the State of the Case.)

In September of 1929, when Jelin took charge, the company held securities at a cost to itself of Four Million Two Hundred Seventy-Eight Thousand Two Hundred Ninety-Three Dollars and Seven Cents. Price Waterhouse & Company made an audit of the company's condition on February 15, 1929, as of January 31, 1929, and listed the value of these securities at Two Million Eight Hundred Seventy-Five Thousand and Four Hundred Ninety Dollars. That audit and that appraisal were made the basis of an executed agreement between the New Jersey Bankers Securities Company and the Equitable Financial Corporation of New York. (This agreement is part of Exhibit C. 15, which appellant did not print in its State of the Case.) As will be hereinbelow more fully related, the New Jersey Bankers Securities Company, on March 20, 1929, agreed in writing to turn over all its assets to a New York Company, owned and controlled by a man by the name of Spielberg. In that deal the said securities owned by the New Jersey Bankers were to be taken over at Two Million Eight Hundred Seventy-Five Thousand Four Hundred Ninety Dollars. (See item 2 on Schedule, page 438, State of Case.) The difference between that selling price and the cost to the company amounted to One Million Four Hundred Two Thousand Eight Hundred Three Dollars and Seven Cents, and represents the shrinkage in value between September 1, 1928, and January 31, 1929.

We have mentioned above an ostensible "operating profit" of Thirteen Thousand Nine Hundred Eighty-Four Dollars and Eighty-Three Cents for the seven-month Jelin administration. In the production of this so-called "profit," there was received by the defendant company during

this period, on its holding of Hobart Service Trust Company stock, a dividend amounting to Thirty Thousand Two Hundred Ten Dollars, being One Dollar on each of its 30,210 shares of stock in that bank. *That was the last dividend that the bank ever paid. It passed its next dividend, and shortly thereafter was closed by the Banking Department of the State of New Jersey. The said dividend of Thirty Thousand Two Hundred Ten Dollars was unwarranted.* (See the testimony of Bank Examiner, Vernon Peer, pages 77 to 172 of the State of the Case, and the Bank Examiner's report and tabulation, Exhibit C. 1, not printed by the appellant.)

Deducting the Thirteen Thousand Nine Hundred Eighty-Four Dollars and Eighty-Three Cents, *ostensibly* made during Jelin's managership, from the shrinkage suffered by the company in the securities held by it, there results a true loss to the company, during these seven months of Jelin's administration, of $1,388,818.24. We have already made reference to this loss and the proofs establishing the same in our earlier discussion in this brief of Jelin's administration.

DEAL BETWEEN COMPANY AND SPIELBERG RESULTING IN BERNSTEIN SUIT NO. I.

The settlement of $2,500,000 made by Weinberger in August of 1928 (of little value as it eventually proved to be and as we indicate below in our brief) and his forced withdrawal from the company as president and director did not in effect accomplish an honest severance between himself and the control of the company. A reading of the minute book of the company (Exhibit "C. 3," not printed by appellant) and

an examination of his activities in the Bernstein suit No. 1 and in the present litigation (see Exhibit "C. 2 of May 29, 1930," being minutes of stockholders' meetings, not printed by appellant) will indicate that he was no less a sinister influence in the affairs of the company after his resignation than before that event. Even while he was in default in carrying out the first undertaking of his settlement agreement, viz., that of paying $200,000 in cash, he was already manoeuvring to put over a "deal" with a New York person by the name of Spielberg, for which deal Weinberger was to be rewarded by being released from the obligations of his settlement agreement and thereby be relieved from his note of $2,300,000 held by the New Jersey Bankers Securities Co. As early as October 4, 1928, the Board of Directors of the defendant company at its meeting, discussed a merger plan submitted by Weinberger. The minutes of that meeting (see Minute Book, Exhibit "C. 3," not printed by appellant) contain the following record:

> "A discussion was held with regard to a merger with a New York concern, which proposition was presented by Mr. Weinberger. The Executive Committee was advised to investigate the advisability of this proposition and to report at the next meeting."

In the minutes of the next meeting, held on October 18, 1928, appears the following record:

> "The merger proposed by Mr. Weinberger was discussed. Owing to the failure of Mr. Weinberger to date, to live up to his settlement agreement, the Committee was unable to report any progress."

On February 8, 1929, Mr. James F. Minturn resigned as a director of the company and Mr. Charles B. Veghte was elected in his place. The

minutes of this meeting show that at the meeting Mr. Harry H. Weinberger presented a report on the proposed merger with the Equitable Financial Corporation of New York, which business was referred to the Executive Committee for purpose of investigation.

At a meeting of the Board on February 21, 1929, the Executive Committee was authorized to procure from the Equitable Financial Corporation a proposition, in writing, as to what they propose to give to the New Jersey Bankers Securities Co., together with a statement in detail showing the New York company's resources and liabilities.

The details of the proposed transaction by which the New Jersey Bankers Securities Co. was to turn over to the Equitable Financial Corporation of New York all of its assets, were negotiated by Mr. Harry H. Weinberger with Mr. Harold Spielberg of New York. On or about February 7, 1929, Price, Waterhouse & Co., the accountants for the New York company, made an audit of *both* companies for the purpose of the proposed transaction *and submitted that audit to Weinberger and Spielberg. No audit of the New York company was made by the accountants of the New Jersey Bankers Securities Co. or by any accountant acting independently for it.* Price, Waterhouse & Co. received their instructions from Mr. Spielberg and Mr. Weinberger (neither of whom was an officer or director of the New Jersey Bankers Securities Co. and neither of whom had been overtly authorized to act for the defendant company). In addition to making an audit of the two companies the auditors were instructed to submit a plan or financial basis upon which to predicate

a proposed exchange of stock agreed upon by Weinberger and Spielberg. It was with its own stock that the New York company intended to pay for all the securities and assets turned over to it. The auditors made a report in writing to Messrs. Spielberg and Weinberger under date of February 7, 1929. Upon the basis of that report the New York company was to pay for the New Jersey Bankers Securities Co. assets as many shares of its Class A Common non-voting stock as would work a ratio of one share of its stock for every four shares of the New Jersey Bankers stock issued and outstanding (eliminating from the calculation the 172,034 shares of Bankers stock owned by Weinberger and deposited with Markley to secure collaterally the payment of Weinberger's note of $2,300,000). That first audit of February 7, 1929, contained the following statment:

> "We were also informed that Mr. Weinberger expects to enter into an agreement with the company whereby he will return for cancellation a portion of the capital stock he holds in liquidation of his indebtedness to the amount of $2,300,000, leaving $75,000 due on stock sold to him for $200,000, the balance having been paid in cash. For this reason we have considered the balance of his note ($75,000) an asset of the company to be transferred."

(This Report is part of Exhibit C. 15 and was omitted from appellant's state of case.)

When this agreement was presented to the Board of Directors of the defendant company it was objected to by three directors, Evans, Veghte and Jelin. They refused to sanction any transaction which had for its purpose releasing Weinberger from the settlement which had been forced out of him and which had been approved by the

Court of Chancery. Thereupon Weinberger and Spielberg caused the audit to be revised and Price, Waterhouse & Co. in about one week's time submitted a new audit under date of February 15, 1929, in which the Weinberger note of $2,300,000.00 was exhibited and regarded as an asset and yet the payment by the New York company in the form of its own stock remained in the earlier ratio of one share of its own stock for every four shares of the stock of the Bankers Corporation. Jelin, Evans and Veghte objected to the transaction, insisting that the audits made by Price, Waterhouse & Co., within one week of each other, clearly indicated that the transaction was designed to help Weinberger to escape his obligation and that if the New York company's first offer of one for four was fair then the second offer was unfair, since by adding the $2,300,000.00 Weinberger note to the assets taken over, the ratio should be correspondingly increased. In determining the assets of the two companies for the purpose of exchange, Price, Waterhouse & Co. in their second report reduced the assets of the New Jersey Bankers Company by approximately three-quarters of a million dollars. This reduction was accomplished by the accountants within the space of one week, although both the report of February 7th and February 15th were based on the same set of figures, namely, the condition of the defendant company as of January 31, 1929. In addition to this reduction the auditors, within that week, charged against the assets contingent liabilities amounting to $360,000. These arbitrary reductions in the value of the New Jersey company's assets exceeded the sum of $1,000,000.00. Jelin, Evans and Veghte demonstrated to their co-directors that the only one who would benefit by the proposed transaction would be Harry H. Wein-

berger and that that was the purpose behind the deal, even though the carrying out of the transaction should spell ruin to the defendant company and tremendous loss to its stockholders. They demonstrated that the second report of Price, Waterhouse & Co. was designed to absorb the Weinberger settlement of $2,500,000.00 to the end that Weinberger might get back the $200,000 paid by him in cash and be released from his note for the balance of $2,300,000. **Jelin, Veghte and Evans pointed out, as we now point out, that while the February 15th audit picked up the $2,300,000 note omitted from the February 7th report, yet if they deducted the 172,034 shares (for which Weinberger had agreed to pay $2,500,000 in his settlement) at $8.25 per share (that being the value placed on the shares of the New Jersey company for the basis of exchange), those 172,034 shares would have a value of $1,419,280.50. Adding to that sum the sum of $1,079,678.17, by which the assets of the New Jersey company had been, within a few days, arbitrarily reduced and depreciated, the result would be the figure $2,498,958.67, a sum within approximately $1,000 of Weinberger's $2,500,000 settlement.** Only these three directors objected to this juggling for the purpose of carrying out a brazenly disclosed purpose of relieving the debtor, Weinberger. These three directors also objected to the value given to the New York assets, showing tremendous inflations for the purpose of the transaction. They also objected to the character of the business of the New York company and to Spielberg's association with it. **They also objected to the fact that in the transaction the New Jersey company was getting only non-voting stock, whereas the entire issue of the voting stock of the New York corporation, consisting of 250,000 shares of Class B stock, was owned and**

controlled by a single individual, Harold Spielberg, who had paid therefor 20c a share or an aggregate of $50,000. Jelin and his associates objected to having the millions of the New Jersey Bankers Securities Co. placed within the fist and control of one individual whose voting stock capital investment was only $50,000 and constitutued but five-eighths of one per cent. of what would be the combined net worth of the two companies, after merger.

Jelin and his associates objected to the proposed deal for the further reason that the payment of dividends on the Class A and Class B stock of the New York company was grossly disproportionate to the investment by each class of stockholders. The charter of the Equitable Financial Corporation provided that no dividends should be paid on the Class B stock until the Class A stock should have received at the rate of $1.20 per share per annum, and that after such payment shall have been made, then Class B stock should receive at the rate of sixty cents per share per annum, and after that payment shall have been made, then the two classes of stock should share equally in further dividends. Spielberg owned the entire block of Class B no par stock, consisting of 250,000 shares, for which he paid $50,000, or, at the rate of $.20 a share. There was issued and outstanding at the time of the proposed deal 101,423 shares of Class A stock of $20 par value, for which the holders paid $2,028,460. If the proposed transaction went through there would be issued 152,349 shares of Class A stock to the New Jersey Company for assets worth (at the auditors' value) about $5,000,000. Out of $1.80 ($1.20 for Class A and $.60 for Class B) Spielberg would receive 33 1/3%, while he had contributed but five-eights

of one per cent. toward the assets as valued by the auditors. Jelin insisted that while the New York stockholders had submitted to that inequitable division of earnings, they had gone with their eyes open into a situation organized and created by Spielberg but that the directors of the New Jersey Bankers Securities Co. were under a duty to their stockholders to withhold the investment of the New Jersey assets from an enterprise in which the earnings were so inequitably and disproportionately divided.

Strife and dissention developed promptly within the directorate of the defendant company. Weinberger was energetic in his efforts to have the deal approved and he conferred with the directors urging them to allow the merger. The Board was sharply split on the question. At a meeting of the Board held on March 14, 1929, the transaction was submitted to a vote. Jelin, Evans and Veghte voted against the transaction. Messrs. Edwards, Armstrong, McCormick, Morrissey, Roegner, Ross and Stafford voted for it. The minutes of that meeting (Minute Book, Exhibit "C. 3," not printed by appellant) contains the following record of the objections made by the dissenting directors:

> "Mr. Evans advised that his reasons for voting against the proposition were as follows:
>
> 1. There is no accountant's statement prepared by our accountant of the assets of the Equitable Casualty Corporation, which constitutes the largest holding of the company with which we propose this contract.
> 2. I object for the reason that the stockholders of this company will receive for their voting stock in the New Jersey Bankers Securities Company non-voting stock of the Equitable holding company.

3. The loss of control of the New Jersey Bankers Securities Company and the acceptance of the minority directorate in the Equitable holding company.
4. The control of the Equitable holding company is in one man—Mr. Harold Spielberg, and I object to surrendering control of this company into his control.

Mr. Jelin advised the Board that he objected to the sale because he does not feel that we are getting a proper ratio in a four to one basis. He feels that the liquidating value of our stock is much more than we are getting for it in a non-voting stock. He feels that the voting trust does not mean anything to this company, where they can only vote for four, which is a minority in the Board of Directors. He also objects because we have no figures on the expenditures or the income of the Equitable Financial Corporation."

On March 20, 1929, there was executed and delivered the agreement between the defendant company and the Equitable Financial Corporation of New York. This agreement was intended to bind the contracting parties to the transaction objected to by Mr. Jelin and his associates on the Board. That agreement was signed for the New York company by Harold Spielberg and for the New Jersey Bankers Securities Co. by Edward I. Edwards. That contract contained, amongst many other significant provisions, the provision that the agreement itself was subject to the following "condition precedent":

"(d) The written assent of Harry H. Weinberger to the transfer by the party of the second part to the party of the first part of the obligation of said Harry H. Weinberger appearing on said Schedule A in the amount of $2,375,000 and the agreement on the part of the party of the first part that it will take said obligation over at its full

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face value with the same force and effect as the said obligation now inures to the benefit of the party of the second part."

The party of the second part in the agreement was the New Jersey Bankers Securities Co.

The special meeting of the stockholders "for the purpose of approving the action of the Board of Directors in the sale of assets to the Equitable Financial Corporation for stock of that corporation" was called by the president, Edward I. Edwards, for April 5, 1929. Accompanying the notice of the meeting sent to each stockholder was a letter of Edward I. Edwards, as president of the company, *recommending the transaction.* In that letter Mr. Edwards said, amongst other things, the following:

"In recommending this to the stockholders your Board feels unusually fortunate in securing for itself and the stockholders the opportunity to consummate this transaction. The Board wishes further to state that the basis for the exchange was predicted upon the report of Price, Waterhouse and Company, on the respective book values of the companies.

* * * * * * *

"The undersigned, your President, will be available daily between this date and the 5th day of April, 1929, between 10 A. M. and 4 P. M., at the offices of your company, to answer all questions and give you the reasons why he is heartily in favor of this proposed arrangement, and you are welcome and requested to call at the office, but should you find it inconvenient to do so, I advise you to sign the enclosed proxy and mail same to me."

The proxy enclosed directed the proxies to vote in favor of the proposition.

As soon as Edwards' letter urging the approval of the proposition was sent to the stockholders, the three dissenting directors, Jelin, Evans and Veghte, sent their letter, under date of March 25, 1929, to the stockholders of the company, setting forth a few of the reasons why they regarded the transaction as unfair and objectionable. Both Edwards' letter and that of the dissenting directors were part of the Bernstein case number 1 and are exhibits in this cause (part of Exhibit C. 15). Our adversaries have seen fit to omit from the State of the Case most of Exhibit C. 15. They did, however, print, as Exhibit D. 1 in this case, a letter of Jelin's under date of April 1, 1929, in which he reports an operating profit of about Sixty-Nine Thousand Dollars, and monies realized from the cancellation of subscriptions amounting to an additional One Hundred Thousand Dollars. The manner in which the Sixty-Nine Thousand Dollars was reduced to a true net profit of only Thirteen Thousand Dollars does not appear in that letter, but is fully developed in the testimony given by the company's auditor, Markel, and by complainant's witness, Braverman. The letter, itself, distinguishes the so-called "operating profit" from the item resulting from cancellation of subscriptions. The testimony in the record is to the effect that money retained on cancellation of subscriptions is not a profit, certainly not a profit resulting from the company's business of buying and selling bank stocks and securities. Nor do the figures in the letter present the steady process of depreciation in the company's securities, which was going on from September 1, 1928, to the time of the attempted transaction with the New York Company, a depreciation amounting to approximately one and one-half million dollars. A careful analysis

of the enormous losses steadily and progressively suffered by the company, and the various stages and periods of loss are set forth in the testimony of the witnesses, Markel and Braverman. We shall with appropriate references later in this brief show these losses.

On April 1, 1929, Solomon Bernstein, a stockholder having sixty-one and three-quarters shares, purchased long before the Mayer suit, was moved by the objections set forth in the letter of the dissenting directors to seek relief by bill in the Court of Chancery. His complaint was exhibited that day and he charged, in substance, the following:

(A) That the proposed transaction with the Equitable Company of New York was inequitable and unfair in that:

(1) The valuations and appraisals of the two companies had been juggled to the gross disadvantage of the New Jersey Company.

(2) That the basis of exchange was not fairly proportionate to the contribution of assets, to the great prejudice and disadvantage of the stockholders of the New Jersey Company.

(3) That as a result of the transaction, the stockholders of the New Jersey Company would possess no voting powers and would be deprived of the right of participation, and that their property would be wholly subject to the dominion of a class of voting stock of which they would get no part.

(4) That under the corporate structure of the New York Company, the earnings of that company would be so divided and distributed as to deny to the stockholders of the New Jersey

Bankers Securities Company an equitable proportion of those earnings, whereby the value of the shares of stock which would come to the stockholders of the New Jersey Company would be reduced and impaired.

(B) That the agreement and transaction were illegal and *ultra vires,* and masked what, in truth and law, was a merger, and that the law concerning mergers had not been complied with.

By that bill the complainant sought injunctive relief against the performance of the agreement with the Equitable Company of New York, and the actual physical turning over to Spielberg and his New York associates of the several millions of dollars constituting the assets of the New Jersey Company.

On the filing of the bill, an order to show cause was advised by Vice-Chancellor Backes on April 1, 1929, returnable April 9, 1929. By that order the defendant company, and those of its directors who were furthering the transaction, were required to show cause why the injunctive relief sought by complainant should not be granted and the transaction preliminarily enjoined. The order contained an *ad interim* restraint against the doing of the things complained of in the bill. The matter was heard by Vice-Chancellor Backes on April 16, 1929, after answer by the defendants. Both sides submitted proofs. *With the consent of counsel for the company, the Court continued the restraint to May 23rd, which was designated as the time for final hearing.* Immediately upon the entry of an appropriate order giving effect to this temporary consented to disposition, an appeal was taken by the defendant company to the Court of Errors and Appeals. The appeal was from the order continuing the restraint, notwith-

standing the fact that it had been entered upon the defendant's consent. Issue was joined on the appeal and the appellant proceeded to print and serve the State of the Case and briefs. Notice was given to the appellant of a motion to dismiss its appeal because taken from an order consented to by the appellant. Neither the appeal nor the motion to dismiss was ever argued, for on the opening day of the Court of Errors, counsel for the appellant withdrew and abandoned his appeal, making such announcement to the Court upon the calling of the calendar.

Thereafter, complainant proceeded with the final hearing before Vice-Chancellor Backes. The defendant company and the defendant's directors appeared by counsel and defended. Complainant called several witnesses. While the witness DeMond (of the firm of Price, Waterhouse & Company) was on the stand, he testified to private instructions received from Weinberger and Spielberg as to the casting of the figures for the purpose of the proposed merger. This testimony is not in the printed record in this case, but should be made part thereof for it is part of Exhibit C. 15. The following morning, while DeMond was still under direct examination, counsel for the defendant company announced that the New York Corporation had withdrawn from the transaction and that the questions raised by complainant's bill had therefore become academic. No further testimony was taken, but eventually the suit was dismissed, *without prejudice,* upon application of compnainant's solicitors. An order was entered allowing complainant's solicitors, for their services and expenses, the sum of Thirteen Thousand Dollars. Of that sum Three Thousand Dollars represented disbursements incurred by complainant in the cause, and the order so re-

cites. The net allowance to complainant's solicitors for their work, both in the Court of Chancery and in the Court of Appeals, was Ten Thousand Dollars. *That order adjudges that the suit had been "properly, necessarily and opportunely brought by complainant and resulted to the great benefit and advantage of the defendant company and its stockholders."*

When the whole of Exhibit C.15 shall have been brought into this Court, it will be manifest that Bernstein's suit for an injunction, commonly called Bernstein's suit number 1, thwarted what, but for that suit, would have been a gigantic corporate looting of the treasury of a company that had already received mortal wounds from those whose duty it was to shelter and guard it, a company rendered, as Vice-Chancellor Backes called it, in his opinion reported in 146 Atl., page 60, 7 Misc. page 479, "moribund." The directors who defended themselves in that suit testified that the company was "frozen" and couldn't operate profitably, and that its salvation lay in merging with Spielberg's company. While that suit never went to a final decree, yet the company's then condition of dryrot, what the directors were willing to do as a palliative, and how the Court viewed the proposal, are significant—and vitally so—as to the helplessness and hopelessness of a company, grounded in unsound, if not irrational, principles of business. The willingness and readiness of the company and seven of its ten directors in April of 1929 to commit the pitiful residue of their trust to the judgment and mercy of Spielberg, and the terms upon which the New Jersey directors were eager to trade, is a confession that the company was then "on the rocks." Vice-Chancellor Backes, in his Reasons on Appeal, (State of the

Case, at page 597) very accurately and tersely portrays the lamentable condition that then existed in the affairs of the company. The Equitable deal was defeated at the end of May, 1929. The bill for receivers was filed in the present case two months later, viz., July 25, 1929. Speaking of the time when the bill was filed, the Vice-Chancellor says (See State of Case at page 597):

> "The appeal questions the Court's power to make allowances for want of jurisdiction to appoint equity receivers. The question of jurisdiction to entertain the bill and appoint receivers was not raised at the original hearing. Indeed at that time things were in such chaos that all concerned looked to the Court for relief. The board of directors had disintegrated, following a bitter strife among the members over the attempt of the majority to hand over what was then nearly four million dollars of cashable assets (Hobart Trust had not then collapsed) to Weinberger's friend Spielberg for his worthless stock in his Equitable Finance Co. Had the deal not been blocked by injunction in the first Bernstein suit all would have been wiped out and Weinberger in all likelihood, would by now have been relieved of liability on his two million three hundred thousand dollar note to the company given to account for his earlier misapplication of its funds, for there can be little doubt that he had arranged for that with Spielberg. All but two or three of the directors had quit and the affairs were in the hands of the president who was in Europe and he had left the funds in charge of his lady secretary. The Hobart Trust in which the company owned 30,000 of the 40,000 shares had been closed the day before the bill was filed; a bank in New York in which it held control was on the point of being taken over by the Federal Government and another in this State was in danger of the same fate. It is from an order appointing equity receivers, in this emergency, to

salvage the wreckage and to avoid greater catastrophe that an appeal has been taken. The Court entertains no question of its power nor of its duty in the circumstances.''

Before passing on to the next chapter in the history of this company, may we call the Court's attention to the fact that in a number of places in their brief our adversaries speak of the ''slight'' holding of the complainant Bernstein —only sixty-one and three-quarters shares. The non-disclosure of the full record does not enable the Court to see, but does not prevent us from mentioning, that at the stockholders' meeting to consider the Equitable transaction, 21,964½ shares voted against the deal and that many stockholders were present in person or by attorney, objecting to what was characterized as an attempted ''grab-off.'' Our adversaries do not lay before this Court the minutes of that meeting, appearing in the minute book, and the stenographic record taken by direction of Vice-Chancellor Backes. The minute book is in evidence as Exhibit C. 3 and the stenographic record is in evidence as Exhibit C. 2 of May 29, 1930. While it is true that 465,000 shares were voted in favor of the transaction, of that number 188,000 shares were Weinberger's, and of that 188,000 shares 172,000 are those shares which he hasn't paid for and cannot and will not pay for, as will hereinafter appear. Those were the shares which, under the terms of the Weinberger settlement, were to be held by Markley and ''voted for the best interests of the company.'' It is impossible to indicate how many shares (other than Weinberger's 188,000) voted affirmatively *by the solicitation of Weinberger,* for the receivers in this case have on file a proof of claim presented by Weinberger, asking Twenty-Five Hundred Dollars in re-imbursement for

that sum spent by him to solicit votes in favor of putting over the Equitable Deal.

COMPANY'S BUSINESS FROM APRIL 1, 1929, TO APPOINTMENT OF EQUITY RECEIVERS ON JULY 25, 1929, DISINTEGRATION OF THE BOARD AND CLOSING OF HOBART SERVICE TRUST COMPANY.

The company hardly breathed between April 1, 1929, and July 25, 1929. Its activities in the main consisted of trying to push over the Equitable deal. Little money came into its treasury except the $75,000 which Stein, McGlynn & Hannoch, acting upon instructions from Mr. Jelin, forced out of Weinberger by contempt proceedings in the Court of Chancery, Weinberger having for a long time defaulted in the payment of that balance on account of the $200,000 cash due from him on his two and one-half million dollar settlement. As a reward for his having protected the trust estate against the effect of the proposed deal with the Equitable, Jelin was forced out of the company as a general manager and its affairs went into the hands of Mr. Edwards. Messrs. Jelin, Evans and Veghte resigned. Other directors resigned. On July 18, 1929, there were only four directors who attended the Board meeting, namely, Armstrong, Morrissey, Ross and Stafford. The president, Mr. Edwards, was absent, having earlier in the month left for Europe. The four directors present, though less than the minimum of five fixed by the charter and by-laws of the company, elected two additional directors, Herman Stark and Isidor Wels. At this time the Hobart Service Trust Company was in considerable financial difficulty and the Department of

Banking and Insurance was making demands upon the management of the bank, with which it was unable to comply, and drastic measures were threatened by the Commissioner of Banking and Insurance. All of this was known to the directors of the defendant company. The subject of the Banking Commissioner's complaints were laid before the directors and the details thereof discussed at their meetings. The minutes of the defendant company, omitted by appellant from the record, show this. In this banking company the defendant owned 30,210 shares, out of the total outstanding issue of 40,000 shares. This bank had been controlled and managed or mismanaged from the time the defendant company bought the control from Weinberger in August of 1927. Its investment in that one item alone represented a capital investment of $2,478,079.19 (see Exhibit "C. 6" at page 402 of State of Case, 3rd Item). This was the defendant company's largest asset and it had been the best piece of bait used to ensnare the public investors. That bank had been on the decline for a long time owing to bad loans, poor business judgment, violations of law and public scandal, all set forth in the report of the banking examiner, Exhibit "C. 1" (not printed by appellant) and in the testimony of the State Banking Examiner, Vernon Peer (State of Case, pages 77 to 172). So sick was that bank and its two banking branches that on July 18, 1929, the four directors then acting, viz., Armstrong, Morrissey, Ross and Stafford, considered selling the bank to a Mr. Arthur Hughes, and they formally resolved to seek bids for the purchase of the bank stock and they fixed September 5, 1929, as the date for receiving bids for the purchase of that bank stock. At that meeting the depleted Board also resolved to employ what they in their resolution called "a se-

curities man'' for the purpose of advising in the buying and selling of securities and the handling of the company's present investments. Six days later viz., on July 24, 1929 the five directors, then functioning (Mr. Edwards still being absent in Europe) met. *Isidor Wels who had been elected a director six days earlier then and there resigned and withdrew from the meeting. Mr. Ross then and there resigned from the Board. That left three directors present, viz., Armstrong, Morrissey and Stark. The only other director was the absent Mr. Edwards. After the resignation of Wels and Ross and at the same meeting, the three surviving directors, viz., Armstrong, Morrissey and Stark, passed a resolution reciting that the liquidating value of the shares of stock owned by the company in the Hobart Service Trust Company was approximately $17.50 per share and that it is desirable in order to protect the depositors of that bank that the defendant company shall do all in its power to preserve the Trust Company as a ''*GOING CONCERN*'' and that therefore the company accept the offer made by Arthur S. Hughes and James S. Waldron to purchase the 30,140 shares of stock of the Hobert Service Trust Company from the defendant company at the price of $20.00 per share. The resolution recites that that offer from Hughes and Waldron is equitable and just. The resolution provided for an immediate withdrawal from the safety vault of the company of the shares of stock so as aforesaid offered to be purchased and the delivery thereof to the offerors, Hughes and Waldron.* It is significant of the disintegration of the defendant's Board of Directors at this time that the minutes recite a waiver of notice signed by all the directors of the company then in office, when in fact the original waiver, made a part of the minutes of the meeting of July 24,

1929, contains only the signatures of Morrissey and Armstrong.

Much has been said about the loss in the sale of the Hobart Service Trust Company stock, a loss of almost two million dollars, as being a result of the appointment of Receivers. The Receivers were not appointed until July 25, 1929. The acceptance of the offer of Hughes and Waldron of the Hobart stock for $20.00 a share was resolved and completed the day before and even before the Bill in this suit was prepared and presented. The indication of the view entertained by the Board of Directors that it was hopeless for the defendant company to continue to own and control the Hobart Service Trust Company and the imperative necessity of a change of ownership so as to keep the banks open and alive, are all manifested in the proceedings in the last minutes of the directors of the defendant company. We here set forth those matters in full, they not having been returned by appellants as part of the record in this case although those minutes were received and marked in evidence (Exhibit "C. 3"):

> "Minutes of a meeting of the Board of Directors of the New Jersey Bankers Securities Company, held in its offices in the Chamber of Commerce Building, Jersey City, New Jersey, on Wednesday, July 24, 1929, at 4:00 P. M.
>
> The meeting was called to order by Mr. Morrissey, and in the absence of the President, Dr. Armstrong was elected Chairman of the meeting.
>
> Present: Messrs. Robert R. Armstrong
> George E. Morrissey
> Stuart C. Ross
> Herman Stark
> Isidor Wels

The Secretary presented the resignation of Mr. Isidor Wels as a Director, who immediately withdrew from the meeting; Mr. Ross shortly thereafter presented his resignation.

The Secretary presented a waiver of notice of the meeting, signed by all the Directors of the Company now in office, excepting Senator Edwards, who is in Europe and cannot be reached, and the same was ordered spread in full upon the minutes and is as follows:

'We, the undersigned, being all the Directors of the New Jersey Bankers Securities Company, in office at the present time, residents in the United States of America, do hereby waive notice of the time, place and purpose of the special meeting of the Board of Directors to be held at the principal office of the company, No. 1 Newark Avenue, Jersey City, New Jersey, and hereby fix July 24, 1929, at 4:00 P. M., as the time, and the principal office of the corporation, No. 1 Newark Avenue, Jersey City, New Jersey, as the place and the consideration of the offer of Arthur S. Hughes and J. H. Waldron to purchase for a price of $20.00 per share, the 30,140 shares of the stock of the Hobart Trust Company, owned by this Company, the purpose of said meeting.

July 24, 1929.

GEO. E. MORRISSEY
ROBERT R. ARMSTRONG'

Upon motion duly seconded, the following RESOLUTION was unanimously adopted:

WHEREAS this corporation is the owner of 30,210 shares of the capital stock of the Hobart Trust Company, and

WHEREAS the Commissioner of Banking and Insurance of the State of New Jersey has this day closed said Institution, and has stated that the capital thereof is impaired

to the extent of three hundred thousand dollars, which indicated that the liquidating value of the stock of said Hobart Trust Company is approximately $17.50 per share, and

WHEREAS in the opinion of this Board it is desirable, in order to protect the depositors having accounts in said Trust Company, that this corporation shall do all in its power to preserve the said Trust Company as a going concern, if the same can be accomplished with fairness to the stockholders of the New Jersey Bankers Securities Company, and WHEREAS this company has this day received an offer from Arthur S. Hughes and James S. Waldron to purchase said 30,140 shares of stock of said Hobart Trust Company from this Company for a price of $20.00 per share, and

WHEREAS Honorable John J. Roegner, President of the Hobart Trust Company, has stated to the Board of Directors of this company that he believes said offer to be an equitable and just offer for the sale of said stock, taking into consideration the circumstances existing at the present time, and

WHEREAS this Board has carefully and at length considered the situation existing, and is of the opinion that the said offer is a fair and reasonable offer for the said stock under the circumstances, and WHEREAS it has been represented to this Board that the Commissioner of Banking and Insurance of the State of New Jersey looks favorably upon such sale.

BE IT RESOLVED by the Board of Directors of the New Jersey Bankers Securities Company, that the corporation accept the offer of Messrs. Arthur S. Hughes and James S. Waldron, provided that the said consideration be paid in cash or certified check upon delivery of said stock, and the Treasurer and Secretary be and they hereby are authorized and directed to sell and deliver said 30,140 shares of stock of the Hobart Trust Com-

pany, owned by this company to said Arthur S. Hughes and James S. Waldron, or their nominees, for a price of $20.00 per share, to be paid in cash or certified check on delivery, and to execute all necessary endorsements and assignments, in the name of this company, in order to effectuate delivery, provided further that before such transaction is consummated the same shall be approved by Vice-Chancellor Backes or some other Vice-Chancellor and the Commissioner of Banking and Insurance.

Upon motion duly seconded, the following RESOLUTION was adopted:

RESOLVED that the Secretary of the Corporation be and she hereby be authorized and directed to withdraw from the custody of the New Jersey National Bank and Trust Company the certificate for 30,140 shares of the capital stock of the Hobart Trust Company now held by that bank for safekeeping for this company.

Upon motion duly seconded, the following RESOLUTION was adopted:

WHEREAS Honorable Edward I. Edwards, President of the corporation, is absent in Europe and will be away for a considerable length of time, be it RESOLVED that the Board of Directors hereby delegates, for the time being, until the return of said Edward I. Edwards all the powers and duties of the President to Herman Stark, Treasurer of the Corporation.

There being no further business, the meet- adjourned.

CATHERINE E. MATEY,
Secretary."

Although the day before there had been delegated to Herman Stark the duties resting upon the absent president, Mr. Edwards, he, on July 25, 1929, upon the closing of the bank, tendered his written resignation as vice-president, treas-

urer and director, so that on July 25, 1929, when complainant's Bill for Receivers was presented to Vice-Chancellor Backes, the defendant company was without a Board consisting of the minimum number required by its charter and by-laws, its Board consisting of only three men, the absent Mr. Edwards and the two who signed the waiver on July 24, 1929, namely Morrissey and Armstrong. It had no treasurer or other fiscal officer. The only remaining officer was a young lady, Miss Catherine E. Matey, (not a director) who was nominally the secretary of the defendant company, but whose duties did not even involve the preparation of the minutes, those being at all times prepared by counsel. Miss Matey was virtually in sole control of the business of the company and the Court so found in two of its opinions (see State of Case at page 69 and at page 597).

On July 24, 1929, the Commissioner of Banking and Insurance of the State of New Jersey closed the Hobart Service Trust Company of Passaic, and its two branch banks, and took possession of their assets, property, books and effects. This the Commissioner did in the exercise of the power given him by statute. The reason that impelled him to take this course was the fact that the bank and its branches had for a long time operated at a disastrous loss, in consequence of which its entire surplus was wiped out and its capital impaired to the extent of Three Hundred Thousand Dollars. The bank had for a long time carried as live assets worthless commercial paper upon which no collection had or could be made; values of real estate owned by the banking company were written up tremendously; the operating expenses of the bank were greatly in excess of its income, present or likely; the quick assets

of the bank represented only 32 per cent. of its liability to depositors, and the fair and reasonable value of all its assets was not equal to its liability in favor of depositors alone and there was no likelihood, even remote, of the stockholders of the bank realizing anything on their stock investment unless the affairs of the bank got into efficient hands and were intelligently and vigorously administered. In taking possession of the banking institution in Passaic, the Commissioner locked its doors and caused police officers to be stationed to safeguard the bank's property against invasion by enraged depositors, hundreds and hundreds of whom were poor illiterates living and working in Passaic and the outlying towns. The closing of the bank resulted in a very chaotic condition. The depositors of the bank, many of whom were small merchants and had their commercial accounts in the bank, feared that they would lose everything and might themselves go under. This was particularly true when the Banking Commissioner announced his intention of forcing the liquidation of the banking company in order to salvage "something" for the imperiled depositors. The action of the Banking Commissioner, wise or not, for all practical purposes terminated the life of the Hobart Bank and its branches, and it became at once evident that that bank, managed by the same group under which it had collapsed, and owned and controlled by the New Jersey Bankers Securities Company, in the latter's disintegrated and deplorable condition, could never again enjoy public confidence and could not re-open its doors. It also became evident that the time had come when the tide of disaster that had attended the ventures and enterprises of the New Jersey Bankers Securities Company should be stemmed by the strong and protective arm of the Chancel-

lor, under whose directions and supervision something might yet be saved of the wreck for the stockholders of the New Jersey Bankers Company. The collapse of the Hobart Service Trust Company was due directly to the lack of proper, efficient and loyal management, all of which it was within the power of the New Jersey Bankers Securities Company's directors to prevent if they had concerned themselves more with watching the banks owned by the company than with trying to hand the company and its assets to a New York man, whose responsibility had not yet been demonstrated. What is true of the condition of the Hobart Service Trust Company on the day the Banking Commissioner closed its doors, was equally true concerning the Perth Amboy National Bank, of Perth Amboy, New Jersey, and the Lebanon National Bank of New York, the holdings in these three banks constituting in cost, the bulk of the defendant company's assets. To save something out of the Hobart debris and to prevent, if possible, a similar debacle to the Perth Amboy National Bank and the Lebanon National Bank, both of which were on the brink of being closed by the Federal Banking Commissioner, and to avert the loss of what remained in the defendant company, the complainant presented his bill on July 25, 1929, to Vice-Chancellor Backes, the same Vice-Chancellor who had struggled with the company's troubles and problems in the Mayer suit, in the Weinberger settlement, and in the Bernstein suit to prevent the Equitable merger, and who had given, as a study of the full record discloses, much of his time and his labors and much of himself to help pull the company from out of the "woods." Complainant's bill set forth the distressing condition which then existed and the emergency which had arisen calling for the

Court's intervention. Because the defendant company had been for a long space of time conducting its business at a great loss and greatly prejudicial to the interests of its stockholders, and was so being conducted at the time the relief was sought, and could not reasonably be expected to conduct its business thereafter with safety to the public and advantage to the stockholders, complainant asked for the appointment of Statutory Receivers or, in the alternative, for the appointment of Receivers under the general and inherent equity powers of the Court of Chancery. The Court thereupon advised the order to show cause of July 25, 1929, returnable July 30, 1929, and, finding "that it is absolutely necessary that a Receiver be forthwith appointed to protect the defendant's stockholding interest in the Hobart Service Trust Company, now in the hands of the Banking Department of this State, pending the return of the within order to show cause, to take charge of all the property and assets, books, papers and securities of the defendant company for the purpose of preserving the same," appointed John J. Stamler and Nicholas LaVecchia Custodial Receivers and directed that a copy of the order be served upon the defendant company by service upon any vice-president of the company or upon its statutory agent within one day from the date of the order. On the return day, the Banking Commissioner appeared with counsel and hundreds of depositors of the Hobart Service Trust Company appeared in person or by Counsel. Everybody's main concern, including that of the Court, was to meet the emergency presented by the closing of the banks, to get them open and operating, to give the depositors back their money, and, if possible, realize something for the stockholders of the New Jersey Bankers Security Company on account of its two and one-

half million dollar investment in that bank. It was in this atmosphere that the Banking Department furnished the proofs appearing in the record of this case, and the complainant proceeded to demonstrate the company's losses and those other conditions which, under the statute, warranted the appointment of Receivers for the company and the winding up of its affairs. During the first day of the hearing before Vice-Chancellor Backes, while the State Banking Examiner was on the stand, another existing emergency was laid before the Court. The National Comptroller of Currency had decided to close the Lebanon National Bank of New York because its capital assets were depleted. That bank had a capital structure of half a million dollars. Its surplus and undivided profits had been written off, and after such writing off further losses had been sustained by the bank. The manner in which Mr. Stamler averted the disaster threatened in the Lebanon National Bank appears in the State of the Case, pages 109 to 136. Mr. Stamler's labors to preserve the Lebanon National Bank, as well as the Perth Amboy National Bank, appear in the various proceedings and many hearings held from time to time before Vice Chancellor Backes, on notice to stockholders, and appear also in the testimony given before Vice-Chancellor Backes on June 24, 1930, none of which is brought up in the printed State of the Case. Heroic measures were resorted to by the Receivers, with the aid of the Court, from time to time to keep the Perth Amboy and the Lebanon open, and the Receivers finally disposed of the defendant company's holdings in both institutions, realizing for and saving to the stockholders of the defendant company a flat quarter of a million dollars for the Lebanon stock and Two Hundred One Thousand Two Hun-

dred Fifty Dollars for the Perth Amboy stock. The sale of the Lebanon stock involved prolonged litigation with a purchaser, all of which was heard by Vice-Chancellor Backes. The purchasers of the stocks in these two banks were found by the Receivers, to whose efforts alone were due the realization of almost half a million dollars from stocks which were seemingly worthless at the time the Receivers were appointed.

At the summary hearings held before Vice-Chancellor Backes in August of 1929, the jurisdiction of the Court to grant relief on complainant's bill was not challenged or questioned. *No defense was put in.* While Mr. McGinnis appeared for the company and participated in the conduct of the suit, the active spirit in opposition to the complainant was Harry Weinberger, who appeared for himself as a stockholder and whose efforts, in the main, were to show, on the cross-examination of the State Banking Examiner, that there had been no justification for the closing of the Hobart Service Trust Company.

Complainant, by the books of the company, by the testimony of the company's own auditor, Mr. Markel, and by the testimony of the accountant, Braverman, demonstrated the following financial experiences and losses of the company to have occurred, *which proof was not controverted:*

The financial condition of the Company on July 29, 1929, was no different than it had been four days before when the Bill of Complaint was presented to Vice-Chancellor Backes. Within those four days the witness Braverman, a certified public accountant and the former chief examiner of the Department of Banking and Insurance of the State of New Jersey, made a thorough examination and analysis of the Company's

fiscal operations from the time it commenced business on August 19, 1927, up to and including the date of his audit, viz.: July 29, 1929, a period of a little less than two years. (See Exhibit "C. 5," State of Case, pages 380 to 391, both inclusive.) That audit contains as Schedule A a statement of the assets and liabilities of the Company as of July 29, 1929; Schedule A-1, the securities owned by the Company on the date last mentioned, and Exhibit B, a statement of its income and expenses for the entire period of its activity and Exhibit C, an analysis of its deficit (deficit amounted to $4,620,865.43). See State of Case, page 391. That statement is in substantial accord with the periodic audits and reports made by the Company's own auditor, Arnold Markel & Co. (See Exhibits on pages 401 to 430, both inclusive, in State of Case. See also the testimony of the two accountants in State of Case.)

The said audits and the testimony of the accountants and the books of the Company, *all in evidence*, established amongst other things the following:

LOSSES

LOSS FOR FIRST FISCAL YEAR FROM SEPTEMBER 1, 1927 TO SEPTEMBER 1, 1928:

Deficit at end of first fiscal year....$780,256.25
The foregoing deficit is made up as follows:

Loss from operations..	332,522.53
Loss on illegal trading by Company in its own stock (after deducting the $2,500,000 Weinberger settlement)	347,048.97
Illegal dividend declared and paid	100,684.75
Total deficit	$780,256.25

The foregoing deficit was entered as such on the books of the Company and was published on its first annual statement sent to stockholders.

The foregoing deficit figures assumed that the Weinberger settlement of $2,500,000 was good and that the collateral security on Weinberger's $2,300,000 promissory note was adequate. The foregoing figures of deficit also assumed that at the end of the first fiscal year no shrinkage had occurred in the value of the Company's holdings and that the cost and market value of the securities were the same.

LOSS FROM SEPTEMBER 1, 1928 TO DECEMBER 31, 1928—4 MONTHS:

Deficit on September 1, 1928 (after adjustment of $11.50)	780,267.75	
Deduct forfeited subscriptions	70,199.63	
	710,068.12	
Add loss from operations for this period of four months	18,416.51	
Book deficit on December 31, 1928, before allowance of shrinkage of securities	728,484.63	728,484.63
Add shrinkage in value of securities:		
Cost	4,527,869.67	
Market value as per the company's statement of December 31, 1928	3,630,266.00	
Loss by shrinkage		897,603.67
True deficit on December 31, 1928		1,626,088.30

Note: Nothing yet written off on Weinberger note.

SHRINKAGE LOSS FOR PERIOD FROM JANUARY 1, 1929 TO FEBRUARY 1, 1929.

The balance sheet of the Company as of December 31, 1928, schedules securities at a cost of	4,278,293.07
Market value as of January 31, 1929, of the securities, used as the basis of the contract with the Equitable Financial Corporation, which values were accepted and adopted by the New Jersey Bankers Securities Co.	2,875,490.00
Shrinkage in securities from September 1, 1928 to January 31, 1929	1,402,803.07
Shrinkage in value of securities already reflected on statement of December 31, 1928 (as above indicated) *Deduct*	897,603.67
Shrinkage loss during January, 1929	505,199.40

SHRINKAGE IN VALUE OF STOCK SECURITIES FOR PERIOD FROM SEPTEMBER 1, 1928 to JULY 29, 1929. (See Braverman's Audit and Testimony in State of Case), indicating separately loss for last 6 months.

Securities at cost	4,335,891.67
Securities at market value on July 29, 1929	1,885,627.00

SHRINKAGE from September 1, 1928 to July 29, 1929.....		2,450,264.67
Deduct shrinkage which occurred prior to January 31, 1929		1,402,803.07
SHRINKAGE loss from February 1, 1929 to July 29, 1929—six months		1,047,461.60

Note: The above assumed that the Hobart Service Company stock would bring $20 per share. In fact it brought only $14 a share. The foregoing also assumed that the Weinberger note was worth $1,000,000. It will yield substantially less.

TO THE ABOVE SHOULD BE ADDED THE FOLLOWING:

Deduction in value of Weinberger's note	1,300,000.00	
Bad accounts receivable	24,728.75	
Organization expenses	157,017.06	
	1,481,745.81	
		1,481,745.81
TOTAL SHRINKAGE for last six months from February 1, 1929 to July 29, 1929		2,529,207.41

THE FOLLOWING IS A SUMMARY OF THE SHRINKAGE IN VALUE OF THE ASSETS, SUFFERED BY THE COMPANY PROGRESSIVELY FOR THE PERIODS AND IN THE AMOUNTS ON THE FOLLOWING SCHEDULE, ALL AS ESTABLISHED BY THE AUDITS AND TESTIMONY OF THE ACCOUNTANTS AND BOOKS OF THE COMPANY:

Summary of Losses in Shrinkage in Assets

Period				*Amount*
9/1/27	to 8/31/28	1 yr.	.....	780,256.25
9/1/28	to 12/31/28	4 mos.	.....	897,603.67
1/1/29	to 1/31/29	1 mo.	.....	505,199.40
2/1/29	to 7/29/29	6 mos.	.....	2,529,207.41

TOTAL LOSS RESULTING FROM SHRINKAGE IN VALUE OF SECURITIES BOUGHT, HELD AND SOLD BY COMPANY 4,712,266.73

Note: The Braverman audit in evidence shows a total loss in shrinkage of $4,620,865.43, resulting in a variance of $91,401.30 from the shrinkage loss of $4,712,266.73 above analyzed. That variance is accounted for as follows:

Loss from operations only not included loss from shrinkage in values shown by Braverman report for entire period is.....	358,896.99
Deduct loss in operating expenses reflected in the Company's deficit at the end of the first year.....	332,522.53
Difference	26,374.46

The Company retained forfeited subscriptions amounting to $117,967.26. Deducting therefrom the aforementioned sum of $26,374.46 results in a difference of $91,592.80.

The aforementioned variance of $91,401.30 is accounted for except to the extent of $191.50.

LOSS ON HOBART STOCK AS OF JULY 25, 1929:	
30,210 shares at average cost of $82.03 per share making total cost	2,478,079.19
Deduct market value as per Braverman's report and as per the Resolution of the Board of New Jersey Bankers Securities Co. passed on July 24, 1929, to sell at $20.00 per share	604,200.00
LOSS ON HOBART STOCK ascertained as of July 24, 1929.....	1,873,879.19
The shares of stock were eventually sold not at $20.00 per share but at $14.00 per share involving an additional loss of 30,210 x $6.00...	181,260.00
True and liquidated loss on Hobart stock	2,055,139.19

Note: The Hobart stock was sold on August 8, 1929, two weeks after the custodial receivers were appointed.

LOSS ON LEBANON NATIONAL BANK

2,449 shares at cost of $296.82 per share—total cost	741,758.40
Sale on January 22, 1930 (the value being no less than on July 25, 1929) deduct	250,000.00
LOSS ON LEBANON NATIONAL BANK STOCK	491,758.40

LOSS ON PERTH AMBOY NATIONAL BANK

1,150 shares at cost of $250.00 per share—total cost	287,500.00
Sale on September 3, 1929 (the value being no less than on July 25, 1929) at $175 per share	201,250.00
LOSS ON PERTH AMBOY NATIONAL BANK STOCK	86,250.00

OPERATING LOSSES NOT INCLUDING LOSSES BY DEPRECIATION

First year (Sept. 1, 1927 to Sept. 1, 1928) as per Company's report	332,522.53
Loss for 10 months and 29 days (Sept. 1, 1928 to July 29, 1929) net operating loss	26,374.46
OPERATING LOSSES FOR 22 MONTHS AND 29 DAYS AS PER BRAVERMAN'S AUDIT	358,896.99

LOSSES DURING JELIN'S MANAGEMENT OF SEVEN MONTHS ENDING MARCH 31, 1929

During this period there was an ostensible profit of $13,984.83. This was possible only because of the receipt of the last dividend of $30,210 from the Hobart Service Trust Company.

THAT BANK PAID NO DIVIDENDS THEREAFTER. There was also included AS PROFITS a large sum of money realized from cancelled subscriptions, which was not a normal operating profit. While this ostensible profit of $13,984.83 was being made for said seven months the Company lost by depreciation and shrinkage in value of securities during the first five months of that period the sum of $1,402,803.07 (see Price, Waterhouse audit adopted by the Company). Besides this loss by shrinkage the Company suffered an additional undetermined shrinkage loss in the last two months of Jelin's administration. Deducting the $13,984.83 from the shrinkage loss during the Jelin administration, the true loss suffered by the Company during that period amounted to $1,388,818.24.

OPERATING LOSSES DURING FOUR MONTHS PRECEDING APPOINTMENT OF RECEIVERS. (SEE EXHIBIT "C. 5," PAGE 387 OF STATE OF CASE).

Period	Net Loss from Operations	Total Net Loss
April, 1929	$16,201.46	$23,008.07
May, 1929	4,936.07	5,110.75
June, 1929	3,387.15	3,610.08
July 1 to July 29, 1929	9,853.14	9,853.14
Total	$34,377.82	$41,582.04

Note: The foregoing losses are not inclusive of the losses resulting from shrinkage or depreciation in value of securities which have been indicated on the summary of shrinkages above tabulated. The loss from this source alone for the last six months preceding the appointment of Receivers amounted to $2,529,207.41.

EARNINGS OF COMPANY FOR FOUR MONTHS PRECEDING APPOINTMENT OF RECEIVERS. (SEE EXHIBIT "C. 5," PAGE 387 OF STATE OF CASE).

	Total Operating Income
April, 1929	$3,200.76
May, 1929	955.17
June, 1929	768.18
July 1 to 29, 1929	1,230.50
Total	$6,154.61

Note: There was no enhancement during this period in the value of any of the securities owned by the Company.

ESTIMATED FUTURE EARNINGS AND LOSSES. (SEE SCHEDULE A-1 OF EXHIBIT C. 5 ON PAGE 389 OF STATE OF CASE. SEE ALSO PAGE 387.)

Estimated minimum operating expenses per year based on the last four months of the Company's business, with no allowance of salary to officers or manager (State of Case, page 387)	$121,500.00
Estimated earnings per year (State of Case, page 389)	17,038.00
RESULTING LOSS PER ANNUM FROM OPERATIONS, ASSUMING NO FUTURE SHRINKAGE IN VALUE OF SECURITIES	$104,462.00

SUMMARY OF CONDITIONS AS THEY EXISTED ON JULY 25, 1929, WHEN VICE-CHANCELLOR BACKES APPOINTED EQUITY RECEIVERS.

1. The conditions which were established by proof before Vice-Chancellor Backes at the hearings held before him on August 1st and 2nd, 1929, were conditions which existed the week before when the bill was presented to him and Custodial Receivers were appointed. Those conditions were as follows:

Out of a total paid in capital of Seven Million Eight Hundred Forty-One Thousand Seven Hundred Ninety-Seven Dollars and Fifty-Seven Cents ($7,841,797.57), the company had suffered, within the space of twenty-three months, losses by depreciation in the value of the stocks held by it (in its capacity as a holding company) amounting to Four Million Seven Hundred Twelve Thousand Two Hundred Sixty-Six Dollars and Seventy-Three Cents ($4,712,266.73), in addition to which it had, within the same period, suffered from its business operations (other than holding stock) a further loss of Three Hundred Fifty-Eight Thousand Eight Hundred Ninety-Six Dollars and Ninety-Nine Cents ($358,896.99), making its total losses for the twenty-three months the sum of Five Million Seventy-One Thousand One Hundred Sixty-Three Dollars and Seventy-Two Cents ($5,071,163.72). This loss was more than 64 per cent. of the paid in capital, and out of what had been a fund of Eight Million Dollars ($8,000,000.00), there was left, on July 25, 1929, less than Three Million Dollars ($3,000,000.00). A very substantial part of that pitiful residue was in peril of being wiped out if the Federal Banking Commissioner pursued his announced purpose of closing the Lebanon

National Bank and the Perth Amboy National Bank. Another substantial part of that residue (the One Million Dollars which was assumed to be the then value of the Weinberger settlement note of Two Million Three Hundred Thousand Dollars) was of doubtful value due to the fact that Weinberger was insolvent (as later admitted by him at Receiver's hearings) and most of the collateral deposited by him was in the process of being wiped out by foreclosure of prior liens.

The loss of Five Million Seventy-One Thousand One Hundred Sixty-Three Dollars and Seventy-Two Cents ($5,071,163.72) averaged to the company, during the period of its corporate activity, a monthly loss of over Two Hundred Twenty Thousand Dollars ($220,000.00), and it was indicative of the ultimate destiny of the company when it was observed that these losses had progressively increased as the months passed along.

2. The board of directors of the company had completely disintegrated, all but three of the directors having resigned their trust the day before, and of those three, one (the president) was absent in Europe. The company was without a vice-president or treasurer or any other executive or fiscal officer, except the young lady in charge of the office, who was nominally the secretary of the company. There was no one present to watch the trust of several million dollars, to do something towards saving the tremendous investment in the Passaic banks, to do something towards averting the loss and disaster which would inevitably follow upon the closing of the Lebanon National Bank of New York and the Perth Amboy National Bank of New Jersey, such closing having been threatened and being imminent.

3. Besides the constant process of depreciation that was going on in the securities held by this "holding company," it was steadily expending more money to operate its office and pay for its telephone and help than it was earning from its operations. Almost all its securities were non-dividend payers, and what had been its best dividend payer (the Hobart Service Trust Company) was then in the initial stages of liquidation. As was subsequently established by the expert testimony of the accountants in the case, the most that the company was likely to earn annually, assuming that it suffered no further shrinkage, would be about Seventeen Thousand Dollars ($17,000.00) a year as against a minimum fixed overhead of One Hundred Twenty-One Thousand Dollars ($121,000.00) a year, involving, therefore, a likely and continuing loss *from operations alone* of One Hundred Four Thousand Dollars ($104,000.00) a year. The estimated earnings were based upon the condition of the several companies whose stock was held by the defendant company, and the estimate of its future operating expenses was based upon its actual and normal operating expenses during the four months next preceding the receivership. The evidence in the case shows that during those four months the company had functioned with a minimum of help and at a minimum of expense.

In this situation the Court of Chancery was asked to step in and constitute some responsible agency to look after the corporate waif. It did so by appointing its Custodial Receivers. In doing so, it not only exercised a right, but performed a public duty. The public had already been sufficiently mulcted and defrauded and was entitled to have the potential salvage of the wreck locked up in the Chancellor's judicial

strong box, there to be safe and secure from further raidings and lootings. How necessary was the Court's intervention, how timely it came, and how wisely it dealt with a desperate situation then presented, is best evidenced by the fact that the company's holding in the Passaic Bank was quickly sold and the bank ultimately reopened by a different group of men, the depositors not losing a dollar, by the further fact that the Receivers so managed the affairs of the Lebanon and the Perth Amboy banks as to avert their being closed by the Federal authorities and so as to sell them ultimately and realize almost half a million dollars, and by the further fact that the Receivers have today in their trust more than one and a half Million Dollars in liquid securities, available for the benefit of creditors and stockholders of the defendant company, with another several hundred thousand dollars likely to be realized on the Weinberger note.

WEINBERGER'S NOTE.

The company had lost in 1927 and 1928, through its stock market manipulations, $2,847,-048.97. Weinberger agreed to settle this loss by buying back from the company the 172,034 shares which it had unlawfully bought and he agreed to pay therefor two and one-half million dollars. This sum, if paid, would operate to restore to the depleted treasury of the company all but $347,048.97 of its loss sustained in its stock trading. The company was willing to swallow that loss and the settlement with Weinberger was effectuated. He agreed to pay the $2,500,000 as follows: $200,000 in cash and the balance by his promissory note of $2,300,000, payable on or before three years from its date, the note to bear interest at 2% per annum on all unpaid

balances, beginning eighteen months after its date and payable quarter-annually. To secure the note he agreed to deposit the following collateral:

(1) A $200,000 mortgage on the Biltmore Apartments at Passaic.

(2) A $100,000 mortgage on the Gregorian Court Apartments at Passaic.

(3) 1,000 shares of the capital stock of the Hobart Service Trust Co.

(4) 16,000 shares of the capital stock of the New Jersey Bankers Securities Co.

(5) $200,000 worth of life insurance policies on his life.

The agreement of settlement provided that the certificate for the 172,034 shares was to be placed in the name of Edward A. Markley, of the law firm of Collins & Corbin; the certificate was to be endorsed by him in blank and to be held by the New Jersey Bankers Securities Co., but only as security for the payment of said note, with the right in Markley to vote said stock *"for the best interests of the said New Jersey Bankers Securities Co."* The settlement agreement provided that the company was to accept this settlement in complete satisfaction of all claims against the following directors or former directors of the company:

Frederick N. Bidwell
Frank C. Campbell
Edward I. Edwards
William W. Evans
William Harris
James F. Minturn
John J. Roegner
Edward Schoen
David G. Smith
Harry H. Weinberger

The settlement agreement also contained the following provision:

> "In the event said Edward A. Markley shall desire to be relieved from holding and voting the 172,034 shares or any part thereof if such holding is reduced as herein provided, he shall have the right upon notice in writing to the Board of Directors of this Company, to resign said right, and the Board in that instance, together with me, shall select a new person to hold and vote said stock in place of said Edward A. Markley, in accordance with the terms herein stated."

Weinberger has paid nothing on account of the promissory note either by way of interest or principal. If the full record of this cause in the Court of Chancery is eventually brought up and laid before this Court (and we have duly objected to its omission) the following will appear:

1. Item No. 1 of the above scheduled collateral, consisting of the $200,000 mortgage on the Biltmore Apartments, was a third mortgage and was cut off and completely wiped out by the foreclosure of a first mortgage on the property. The foreclosure sale yielded several hundred thousand dollars less than the amount of the first mortgage.
2. Item No. 2 of the above scheduled collateral, consisting of a $100,000 second mortgage on the Gregorian Court Apartments, was defaulted in and was foreclosed by the Court's Receivers. At the foreclosure sale the Receivers bought in for $1,000, whereby the $100,000

	mortgage resolved itself into the sum of.....	$ 1,000.00
	Note: The receivers own the Gregorian Court Apartments but their equity therein, if worth anything, is of undeterminable value.	
3.	Item No. 3 of the collateral, consisting of the 1,000 shares of the capital stock of the Hobart Service Trust Company has a present value of approximately	50,000.00
	This value is due to the character of its present efficient management.	
4.	The 4th item of collateral, consisting of 16,000 shares of the capital stock of the New Jersey Bankers Securities Co., has a liquidating value of about....	$ 60,000.00
5.	The 5th item of collateral, consisting of $200,000 worth of insurance on the life of Harry H. Weinberger, has been wiped out in that the policies lapsed for non-payment of premium, their surrender value having been used to keep them alive as long as possible. The surrender value was trivial.	
	PRESENT VALUE OF ABOVE COLLATERAL...	$111,000.00

Note: The shares of stock of the defendant company have a liquidating value of about $4.00 a share but this is without taking into account the 172,034 shares bought by Weinberger and not paid for. If they are to be regarded in determining the value of the collateral of the note, then the liquidating value of all the other shares would be proportionately reduced.

In addition the company holds nine guaranties, collateral to said promissory note, said guaranties having been made by nine former directors of the defendant company, each of which instruments guaranties the payment of the note but is limited to a maximum of $50,000. The Receivers' report made at a hearing in the cause before Vice-Chancellor Backes, indicates that there is no likelihood of realizing on these agreements of guaranty more than the aggregate sum of $300,000. This sum, added to value of the collateral security above scheduled, results in an aggregate value of all the collateral in the sum of FOUR HUNDRED AND ELEVEN THOUSAND DOLLARS ($411,000.00).

The Receivers, pursuant to an order entered in this cause, conducted examinations into the value of the company's assets, including Weinberger's note of $2,300,000. Under an order of the Court the examination was held before Philip J. Schotland, a Special Master designated by the Court to take the examination. At that examination Weinberger was examined under oath and his financial worth and responsibility was probed. He admitted that if the note of $2,300,000 is a liability enforcible against him, he is insolvent. The testimony given before the Special Master was offered and received as an exhibit in the cause and it was marked. Appellants have not included it in the State of the Case. Weinberger's testimony can be read profitably in connection with the testimony of the State Banking Examiner, appearing in the printed State of the Case. It then becomes apparent that much of the misfortune that befell the Hobart Service Trust Company was due to the bad paper in the bank put in by Weinberger and some of his companies and associates.

EFFORTS OF VARIOUS GROUPS TO GAIN CONTROL OF THE FUND IN COURT.

When the Equity Receivers were appointed in August of 1929, and ever since that time there have been issued and outstanding 648,669 shares of the stock of the company. Of this number 188,034 were the Weinberger shares put up collaterally to secure his settlement note of $2,300,000 and, of this latter number, 172,034 shares have not been paid for. These figures become important in view of the fact that one of the three appeals before the Court is from an Order of the Chancellor refusing to restore

the fund in Court to a Board claiming to have been *legally* elected by the stockholders. It may be helpful to tabulate the aforementioned figures in the following form:

Total number of shares outstanding (including Harry H. Weinberger's stock pledged with the company to secure his settlement note of $2,300,000)	648,669
Number of Weinberger shares paid for and pledged with the company to secure note	16,000
NUMBER OF SHARES OUTSTANDING, EXCLUSIVE OF THE WEINBERGER PAID FOR STOCK AND INCLUSIVE OF THE STOCK NOT PAID FOR	632,669
Less the number of shares repurchased by Weinberger as part of his settlement, the unpaid purchase price therefor being evidenced by his promissory note of $2,300,000	172,034
TOTAL OF OUTSTANDING SHARES EXCLUSIVE OF WEINBERGER STOCK	460,635

(The foregoing figures appear in the testimony of Miss Catherine Matey, the secretary of the defendant company, and in her tabulations received in evidence at a hearing held by Vice-Chancellor Backes on the petition praying for the restoration of the company's assets.)

It is from an Order denying the restoration so presented that the second of the three appeals is presented to this Court. The appellants have not brought up with its printed case the testimony and exhibits laid before the Court below on the hearings conducted on the Petition to restore. They have presented only the petition and the supplement thereto and the Court's

Order denying restoration. We have objected to this omission and at the time of the writing of this Brief assume that the omissions will be properly rectified. We shall find it necessary to refer to testimony and exhibits not *yet* in the printed record.

The By-Laws of the company (see Minute Book Exhibit "C. 3" of August 8, 1929) provide as follows:

> "5. A majority of the stock issued and outstanding entitled to vote, represented by the holders thereof, either in person or by proxy, shall be and constitute a quorum at all meetings of stockholders.
>
> "7. The holders of 51% per cent. of the stock issued and outstanding, and entitled to vote thereat, present in person, or represented by proxy, shall be requisite and shall constitute a quorum at all meetings of the stockholders for the transaction of business except as otherwise provided by law, by the certificate of incorporation or by these by-laws. If, however, such majority shall not be present or represented at any meeting of the stockholders, the stockholders entitled to vote thereat, present in person, or by proxy, shall have power to adjourn the meeting from time to time, without notices other than announcement at the meeting, until the requisite amount of voting stock shall be present. At such adjourned meeting at which the requisite amount of voting stock shall be represented any business may be transacted which might have been transacted at the original meeting.
>
> "8. At each meeting of the stockholders every stockholder having the right to vote shall be entitled to vote in person, or by proxy appointed by an instrument in writing subscribed by such stockholder and bearing a date not more than three years prior to said meeting, unless said instrument provides for a longer period. Each stockholder shall

have one vote for each share of stock having voting power, registered in his name on the books of the corporation, except that no share of stock shall be voted on at any election for directors which has been transferred on the books of the corporation within twenty days next preceding such election. The vote for directors, and, upon demand of any stockholder, the vote upon any question before the meeting, shall be by ballot. All elections shall be had and all questions decided by a majority vote.

"15. The property and business of this corporation shall be managed by the Board of Directors of not less than five or more than twenty-five in number, and they shall be elected either for a term of one, two, three, four and five years, or yearly at the annual meeting of the stockholders, and each director shall be elected to serve until his successor shall be elected and shall qualify. One of the Directors must at all times be an actual resident of the State of New Jersey."

These By-Laws were subsequently amended so as to provide for a Board of no less than five and no more than fifteen.

The Certificate of Incorporation of the company was amended several times with respect to the number of directors to constitute the Board. The final amendment in that respect provides for a Board of no less than five and no more than fifteen directors.

Between the time of their appointment on August 8, 1929, and the 4th day of December, 1929, the Equity Receivers, upon express authority granted by the Chancellor and upon notice to stockholders and creditors, disposed of many of the company's frozen assets, reducing the same to cash and investing them in securities readily and quickly convertible into cash. On

December 4, 1929, the liquid fund in the hands of the Receivers was so large and substantial as to enable them to pay, if the Court approved, an intermediate liquidating dividend of $1.50 on each outstanding share. Authority to do this was sought by the Receivers' Petition presented to Vice-Chancellor Backes, upon which an Order to Show Cause was entered on December 4, 1929, returnable on December 17, 1929, directing the stockholders and creditors of the defendant company to show cause why the Receivers should not be directed to pay and distribute the intermediate dividend of $1.50 per share or a dividend in some other amount. Due notice of this proceeding was given to all stockholders and creditors.

On the return of said Order to Show Cause there appeared before Vice-Chancellor Backes Mr. Harry H. Weinberger in association with Mr. Isadore Glauberman. That was Glauberman's first public appearance in the case. Both he and Weinberger argued against distributing amongst the stockholders any intermediate dividend. Glauberman informed the Court that a group of stockholders had organized themselves into a committee and that this committee objected to the distribution of dividends to stockholders or the making of any allowances to the Receivers or counsel. He stated to the Court that no stockholders' meeting had been called because of the outstanding restraint incorporated in the Court's Interlocutory Order of August 8, 1929. Vice-Chancellor Backes then and there informed counsel that there was outstanding no restraint of such character as to prevent the stockholders from conducting a stockholders' meeting and that the Committee represented by Mr. Glauberman was at liberty to conduct such meeting. Glauberman informed the Court that the Committee desired to

have the stockholders elect a Board of Directors for the company, which Board, if elected, could petition the Court for the restoration to it of the assets in the hands of the Receivers. Counsel for the Committee suggested to the Court that the emergency which had existed at the time of the appointment of Equity Receivers was no longer present and that, therefore, he desired to accomplish the restoration of the fund and to prevent its distribution amongst the stockholders (the distribution by the Receivers contemplated an appropriate reserve for claims of creditors, most of which were in litigation or otherwise disputed). The Court then and there informed counsel for the Committee that whether or not the assets were ultimately restored to the petitioning group or any other group, depended not only upon the wishes of a majority of the stockholders (if a majority would want restoration) but also upon the plans and purposes to which the fund would be dedicated if restored. The Court informed counsel that the rights and interests of the minority stockholders would be protected against the wishes of a majority of the stockholders (as yet it was unknown what a canvass amongst the stockholders would produce by way of expression). The Court, however, at that hearing on December 17, 1929, informed Glauberman that if he, Vice-Chancellor Backes, would ultimately decide in favor of turning back the company, it would only be to a *legally constituted board*, and that, even if everything else were favorable to restoration, he would, nevertheless, not risk placing two million dollars into the hands of the group unless a majority of the outstanding stock clearly and affirmatively indicated their approval of such turning over. This is the pronouncement of the Vice-Chancellor which our adversaries, in their Brief, say constituted a

promise and declaration by the Court below that the fund *would* be turned over. The minutes of the proceedings at this hearing are not made part of the printed record.

Glauberman and his Committee called a stockholders' meeting which was held at Jersey City on January 14th and 16, 1930,. The minutes of this meeting (Exhibit "C. 2" of May 29, 1930) are not brought up with the record of the Court below. The meeting was attended by a large number of stockholders who were both for and against liquidation. The meeting was tumultuous. Charges and counter-charges were hurled by the conflicting groups. The right of Markley to vote the 172,034 Weinberger shares (which were not paid for and which were to be voted only "for the best interests of the company") was challenged. The meeting adjourned to the 16th of January, 1930, at which time a vote was taken. Prior to this time the Stockholders' Committee had canvassed and secured proxies from a number of stockholders. These proxies ran in favor of four men, CONJUNCTIVELY, viz.:

CHARLES J. RYAN
FRANK S. WINSTON
JOSEPH C. HUMBERT
HENRY LOUDEN.

There was no provision in the proxies for representation by any number less than the whole number of proxies named therein. Because we assert that that meeting was not a legal meeting, we deem it important to furnish at this point the proxy in full:

PROXY

"KNOW ALL MEN BY THESE PRESENTS

THAT I, the undersigned, being the owner of ——— shares of stock of the New Jersey Bankers Securities Co., do hereby constitute and appoint

CHARLES J. RYAN JOSEPH C. HUMBERT FRANK S. WINSTON HENRY LOUDEN

my true and lawful attorneys in my name, place and stead to vote upon the stock owned by me or standing in my name as my proxy at a meeting of the stockholders to be held at the First National Bank Building, 1 Exchange Place, Jersey City, New Jersey (10th floor), on the 14th day of January, 1930, at 7 P. M., or at any adjournment thereof, for the purposes of:

1. Electing a new Board of Directors to qualify and serve in accordance with the provisions of the Certificate of Incorporation, and by-laws of the company, and the laws of the State of New Jersey.
2. Authorizing by resolution the newly elected Board of Directors to petition the Court of Chancery to vacate the receivership and restore the property of the company for its administration.
3. Authorizing the newly elected Board of Directors to, thereafter, take such further steps as they may deem necessary for the preservation of the assets of the company.
4. Authorizing the Board of Directors to take such steps as shall be necessary to carry out and put into effect the purposes hereinabove stated.
5. Transacting any other business which may lawfully come before the said meeting; hereby granting the said attorneys as a whole or by majority thereof full power and authority to act for me and in my name at the said meeting or meet-

> ings, hereby ratifying and confirming all that my said attorneys may do in my name, place and stead irrevocably until this proxy is revoked by me in writing.
>
> IN WITNESS WHEREOF, I have hereunto set my hand and seal this day of January, 1930.
>
> ..... L. S.
>
> Address.....
>
> Witness:
>
> ...."

JOSEPH C. HUMBERT, ONE OF THE FOUR PROXIES, DID NOT ATTEND THE MEETING AND DID NOT VOTE. HENRY LOUDEN, ANOTHER OF THE FOUR PROXIES, DID ATTEND THE MEETING BUT RESIGNED AND LEFT THE MEETING BEFORE THE BALLOT WAS TAKEN. HE DID NOT VOTE. His resignation was dated January 14, 1930, and was delivered to the presiding officers of the meeting on January 16, 1930, before nominations for directors were acted on. The reason given by him at the time for his resignation is part of Exhibit "C. 2" of May 29, 1930. He said:

> "Mr. Louden: I think that in the step that I am about to take tonight, in order to justify myself in my attitude to you and myself, that I should give an explanation. I have been working on this committee under the guidance of counsel for the past several months, when I undertook the duties at the request of the few stockholders at the first meeting, I carefully stipulated emphatically to every man, that Harry Weinberger was in no way to be associated with this committee. All right. I was assured that he had none. A few meetings later, a good large attendance of some outsiders came. On my right hand sat a gentleman I did not know, and he was received very friendly by every

member present. I have never known yet how he was invited. I did not know him; never had seen him until I heard him spoken of by the familiar name of 'Harry,' and then as 'Mr. Weinberger.' I did not like the position I was in, after having undertaken this job. So I arose and I very vigorously protested against his presence at that meeting. I think when everyone knows the attitude of the Court, of the Chancellor, expressed in court, that anything Mr. Weinberger has anything to do with—I pointed out to him that his presence at that meeting was just destroying the very work that we were trying to do, and I asked him to retire, and after a few minutes—

Mr. : A point of order. This gentleman is not talking on the motion.

Chairman Ryan: Will you keep your discussion to the motion?

Do you wish to hear the gentleman?

(Loud voices: Yes, yes, yes.)

Mr. Louden: After he had got up and made a cursory explanation that he had been invited — and who invited him, I do not know—I will give credit to the members of the committee, that they didn't invite him but he was there, and I told Mr. Weinberger that I hoped that he understood clearly that I was no creature of his and perfectly independent, and would have nothing to do with anything in which the Weinbergers were associated.

We went along again for a meeting or two, until last week I got a notice of a gathering of preferred stockholders, and while Mr. Neurenstein has explained to me that I should have been there, that it was not as a slight to me, that I should have been there at that meeting, but as it called for a meeting of those who owned 500 shares or over, I considered myself out of it, until the next day I heard of those who were at that meeting.

Now, Mr. Glauberman, you will correct me —among those who appeared in the meeting was Harry Weinberger, Joseph Weinberger—

Mr. Joseph Weinberger: I am here now, too.

Mr. Louden: —Mr. Campbell and another gentleman by the name of Jackovics; at that meeting they were allowed and received and spoke, and received honorably.

Now, I think the least that can be said of any man of ordinary instinct, resting under a cloud that the four men have been under, indicted by the Grand Jury of Passaic County, the least that they could have done was to stay away from that meeting. I came to the conclusion that I was a round peg in a square hole, and I wish at this period to retire from this committee as gracefully as I possibly can. I thank you.

Mr. Rosenfeld: I want to know one thing. Does the speaker feel—and this is without any opinion on my part; I want to make up my mind as to the qualifications of the people who will shortly be nominated on your board—does the speaker feel that these people will not promote the interest of those who have money in this investment?

Mr. Louden: You can see the holes of the maggots as well as I. I am stating my opinion. You can judge accordingly."

Only two proxies, Charles J. Ryan and Frank S. Winston, cast their ballot for the stock claimed to be represented by them. In such capacity they voted 148,000 shares (this including the 16,000 paid shares pledged by Weinberger with the company on his $2,300,000 note). Markley voted the 172,034 shares held by him as collateral for the $2,300,000 note of Weinberger and to be voted "for the best interests of the company." The votes of the two proxies and the Markley

vote amounted to about 320,000 shares. Directors were voted for and the following nine were declared elected by the following votes (for list and tabulation see page 529 of printed record):

Directors	No. of Votes Received
Hyman Kramer	321,166¼
Roscoe Strickland	320,966
Samuel Silberstein	320,701¼
Samuel Kappel	319,485¼
Frederick Christie	317,026
Charles J. Ryan	315,684
Samuel Kipnis	310,412¼
Abraham Quint	148,687¼
Joseph Socolof	3,352

It will be observed that the director receiving the largest number of votes was Hyman Kramer, who received 321,166¼ votes.

The minutes of the said meeting of the stockholders were taken stenographically by Nicholas W. Bindseil, one of the Special Masters in Chancery, who is also the official Chancery stenographer under Vice-Chancellor Berry. This was done by the express direction of Vice-Chancellor Backes. The minutes of that meeting were subsequently presented at a hearing before Vice-Chancellor Backes on the defendant's petition, which set up the election of the nine directors and prayed restoration. It was received and marked in evidence. (Exhibit C. 2 of 5/29/1930, not printed.)

The nine persons claiming to be directors, viz., Kramer, Strickland, Silberstein, Kappel, Christie, Ryan, Kipnis, Quint and Socolof, met on January 20, 1930, even before the results of the meeting had been laid before the Vice-Chancellor, and elected the following officers for the defendant company:

President—Roscoe Strickland
Vice-President—Frederick Christie
Treasurer—Samuel Silberstein
Secretary—Hyman Kramer
Assistant Secretary—Charles J. Ryan

On the petition to restore an order was entered on January 27, 1930, directing the Equity Receivers to show cause on February 4, 1930, why the prayer for restoration should not be granted. At the several hearings on this order to show cause, stockholders appearing by their counsel objected to the turning over of the company to the group of nine men, asserting the following:

1. That the meeting had not been legally constituted in that:

A. The total number of shares of stock represented at the meeting (including the proxies and the Markley shares) was less than 51 per cent. or even a majority of the stock issued and outstanding, and that according to the By-Laws there been no meeting.

B. That the stock voted by the proxies, amounting to 148,000 shares, could not be counted because neither the four proxies, nor a majority of that number, had acted.

C. That Markley's vote for the 172,034 shares should not be counted.

The Court announced that it had grave doubts as to the legality of the meeting but was certain that no such expression had come from the stockholders to persuade it to turn over the several millions of dollars to the new group, and that all doubts would have to be resolved against any risk involved in such turning over. The Court thereupon directed its Receivers to mail to the

stockholders the letter appearing on page 547 of the State of the Case. That letter was sent on or about March 7, 1930. With each letter was sent the postal card appearing on pages 550-551 of the State of the Case. The result of that ballot was proved before the Court and is set forth in the Court's order of April 7, 1930. (See State of Case, page 558.) Of the 648,669 shares outstanding, stockholders signing the cards in accordance with the instructions of the letter expressed themselves as follows:

1. 1201 stockholders, holding 82,835¼ shares, wanted their money at once.

2. 1968 stockholders, holding 153,922¾ shares, wanted the company turned over to the new Board.

3. 218 stockholders, holding 13,592½ shares, wanted a different board of directors.

4. 106 stockholders, holding 9,147 shares, did not express themselves in accordance with the instructions of the Court.

5. The balance of the stockholders, about 10,000 in number and holding 389,171½ shares out of the total issue of 648,669, made no response of any kind. Markley made no response for the 172,034 shares held by him under the voting trust. The unresponsive stockholders represented more than 74 per cent. of the total number of stockholders of the company and more than 59 per cent. of the total stock outstanding.

The Court being of the opinion that another opportunity might be afforded to get some dependable expression from the stockholders, made the order of April 7, 1930, (State of the Case, page 558) under which a meeting was conducted on April 17, 1930, under the supervision of Ralph E. Lum, a Master designated by Vice-Chancellor Backes, to preside at and conduct that meeting. A few days before that meeting was held, the

law firm of Riker & Riker, acting for a stockholder by the name of Green, filed a bill in the Court of Chancery to restrain Markley from voting the Weinberger block of 172,034 shares. Vice-Chancellor Backes denied temporary restraint and an appeal was taken by the complainant Green to the Court of Errors and Appeals and notice was given of an application to the Court of Appeals for restraint against Markley, pending the hearing of the appeal. The Court of Appeals heard the matter on April 17, 1930, Mr. Fitzsimmons appearing for the application and Mr. Harry Weinberger appearing in opposition. We appeared before the Court of Appeals to present a fact which had occurred the night before. Mr. Markley had, in writing, resigned as trustee of the said stockholding of 172,034 shares. His resignation (subsequently made and received as an exhibit before Vice-Chancellor Backes in this cause) was as follows:

"April 15, 1930.

"Board of Directors New Jersey Bankers Securities Company,
60 Park Place,
Newark, N. J.

"Dear Sirs:

"By virtue of an agreement between the New Jersey Bankers Securities Company and Harry H. Weinberger, authorized by the Board of Directors of the New Jersey Bankers Securities Company in August, 1928, which later was approved by the Court of Chancery in the case of Fannie Mayer *vs.* New Jersey Bankers Securities Company, I am authorized to vote 172,034 shares of the stock of your company which stands in my name on the books of said company, and is deposited with your company as collateral security for the note dated October 4, 1928 of Harry H. Weinberger for $2,300,000. Under said agreement I have the

right to vote said stock for the best interests of said New Jersey Bankers Securities Company. Also under the terms of said agreement it is provided,

> "'In the event that said Edward A. Markley shall desire to be relieved from holding and voting the 172,034 shares, or any part thereof, if holding is reduced as herein provided, he shall have the right, upon notice in writing to the Board of Directors of this company (New Jersey Bankers Securities Company) to resign said right and the Board of Directors in that instance, together with me (Harry H. Weinberger) shall select a new person to hold and vote said stock in place of said Edward A. Markley, in accordance with the terms herein stated.'

Since the appointment of Nicholas LaVecchia, Esq. and John J. Stamler, Esq., as Receivers of the New Jersey Bankers Securities Company by the Court of Chancery of New Jersey, I have been out of touch with its affairs. At least I have not been in close enough touch with its affairs to, in my opinion, vote said stock with a full understanding of all of the circumstances surrounding the company's affairs at this time.

"I therefore, in accordance with the terms of said agreement hereinbefore quoted, resign my right to hold and vote said 172,034 shares. This resignation shall take effect immediately.

"I am sending copies of this resignation not only to the New Jersey Bankers Securities Company but also to Hon. John H. Backes and Harry H. Weinberger, Esq.,

"Very Truly Yours,

"EDWARD A. MARKLEY"

When the Court of Appeals was informed of the fact of Markley's resignation a day or two before, it inquired of Mr. Clement Corbin, Mr. Markley's law partner, (who appeared for him) whether Mr. Markley would abide by his letter of resignation. The Court was assured by Mr. Corbin that Mr. Markley would stand by that resignation. The Court of Appeals then denied any temporary restraint against the meeting and the meeting was conducted that night under the hand of Mr. Ralph Lum. At that meeting Mr. Markley appeared in person and voted 100 shares held by him personally. He voted those shares for the same nine men whose election had been attempted at the January stockholders' meeting. **He did not vote the 172,034 shares (or any part thereof) with respect to which he had resigned two days before.** Mr. Markley, before voting, announced "**that he was there to vote 100 shares of his own stock, but not to vote the one hundred seventy-two thousand and odd shares for the reason that he had already resigned the right to vote.**" (See Master's Report, State of the Case, page 563, lines 20-25). The names of the same nine men, amongst others, were put into nomination as directors of the company. They received the largest number of votes. Of the nine, Samuel Kappel received the largest number of votes, viz., 196,872, and Strickland received the lowest number of votes, 193,472. (See page 564 of State of the Case.)

There were present at that meeting, in person or by proxy, 197,182 shares. **This represented 30.4 per cent. of the entire stock outstanding, including the Markley 172,034 holding; and it represented 41.3 per cent. of the outstanding stock if the Markley holding were deducted from the total outstanding stock and not included in the calculation.** These facts were subsequently de-

veloped before Vice-Chancellor Backes at a hearing and were met by the single contention that Markley's presence at the meeting should be counted as helping to constitute a quorum and that the 172,034 shares, added to 197,182 otherwise present, furnished the 51 per cent. attendance required by the By-Laws of the company to constitute a legal stockholders' meeting. This contention the Vice-Chancellor declined to adopt. He held that inasmuch as Markley had resigned before the meeting his presence at that meeting was not and could not be that of "Markley the trustee," particularly in view of Markley's announcement at the meeting that he was there only in the capacity of a stockholder holding personally 100 shares.

The Court finally, on April 29, 1930, allowed to complainant the order to show cause why STATUTORY RECEIVERS should not be appointed. Service of that order was made upon the defendant and upon all its stockholders and creditors. Upon the return of that order, the Court took voluminous proofs. In behalf of the defendant company proofs were submitted both in resistance to the appointment of Statutory Receivers and in support of the petition to return the company. The defendant called a number of the men in whose behalf it was claimed that they had been elected directors of the company. In addition to that, the defendant offered and there was received the testimony of so-called "experts on securities." That testimony is very vital to show what the plans and purposes were of these nine men with respect to the several million dollars which they sought to take into their hands. Various plans of operation by which it was claimed the company could make

20, 30 or 50 per cent. a year on its money were laid before the Court. Fanciful financial schemes were presented as a panacea for the company's ills. They all resolved themselves into a proposal to speculate and gamble with the fund. This the Court wouldn't sanction, and upon the conclusion of the whole case, he appointed Statutory Receivers in accordance with the reservation contained in his Interlocutory Order of August 8, 1930. **THIS FINAL DECREE HAS NOT BEEN APPEALED.** Under it the Equity Receivership created by the order of August 8, 1929, was terminated, and since the entry of the Final Decree of May 29, 1930, only the Statutory Receivers have functioned, they having promptly qualified under their appointment.

Upon appointing Statutory Receivers, the Court denied the application to turn over the company. From his order of denial one of the present appeals was taken. Our adversaries have not brought up as part of the record on appeal any of the testimony taken before the Court below, much of which was offered by the defendant itself in relation to the petition to restore the assets of the company. Commenting upon that omitted testimony, and particularly upon the defendant's own proofs, we say that there was *demonstrated* before the Court below, by the proofs before it, the utter futility of attempting to rehabilitate a company that was not only "moribund" but decomposed.

We have at considerable length presented the facts in this case. We feel the Court of Appeals, once possessed of the facts, will find ample authority in law to approve and sustain each of the three judicial acts made the subject of the pending appeals. In view of the fact that the appel-

lant has elected to review the order appointing Equity Receivers and not the order appointing Statutory Receivers, our discussion of the law of the case will necessarily be much abbreviated.

POINT I.

The appointment of Equity Receivers by the Order of August 8, 1929, was justified by the conditions established before the Court below and was within the relief prayed for in the bill.

The major portion of our adversaries' Brief, from pages 46 to 130 (both inclusive) is a history and an analysis of the 1912 amendment to the Corporation Act, and an attempt to show that under the facts and the cases the appointment of STATUTORY RECEIVERS was unwarranted. That question is not before this Court. The Final Decree appointing Statutory Receivers was entered May 29, 1930, and is not brought up by the appeal. The present appeal (aside from reviewing the Court's refusal to turn over the company and the Court's allowance of partial compensation to Receivers and counsel) is limited strictly to the Court's Order of August 8, 1929. Present counsel for the appellant announced to the Court below in the course of a hearing and after the entry of the Final Decree that no appeal was intended from the Final Decree but that the appellant would stand or fall by the appeal from the Interlocutory Decree. Vice-Chancellor Backes in his Reasons Upon Appeal (see page 599 of State of Case) reports this assurance made by the appellant:

> "There may be merit in an appeal from the final decree, but none is taken. Counsel states that he intends standing or falling by his appeal from the interlocutory decree appointing equity receivers and that an appeal

is not intended from the final decree if he fails. This assurance against the delay of a second appeal from the final decree may readily be avoided by dismissing present counsel. Already inspired appeals have been taken by a stockholder from the decree and order now before the Court of Appeals."

It is, therefore, altogether unnecessary to go into any extensive discussion of the 1912 amendment to the Corporation Act, under the authority of which the Statutory Receivers were appointed by a Final Decree not brought up by this appeal. Were it at all appropriate to discuss that amendment it would be sufficient to say that under the abundant proofs in the case the complainant had established, even demonstrated, the factual conditions and elements contemplated by that amendment, viz.:

1. The company's business had, from the time of its organization down to the time of the hearing before the Court below and for an uninterrupted period of twenty-three months, been conducted at a great loss and greatly prejudicial to the interests of the company's stockholders.
2. Its business was so being conducted at the time of the filing of the Bill of Complaint.
3. From the foregoing conditions or elements there logically flowed and resulted an inference or consequence, sometimes but erroneously called an element required by the Statute, viz: It "appeared" to the Court that the company's business could not be conducted with safety to the public and advantage to the stockholders.

It will be observed that where in Section 65 of the Corporation Act (as amended by the Laws of 1912, Chapter 300, page 535) the Legislature declares what conditions shall exist to entitle

any creditor or stockholder of a corporation to seek relief from the Chancellor by injunction and the appointment of a receiver, only the following conditions are stated:

1. Insolvency.

   or

2. Suspension of ordinary business for want of funds to carry on same

   or

3. "If its business has been and is being conducted at a great loss and greatly prejudicial to the interest of its creditors or stockholders."

There is not mentioned or included in this declaratory portion of the Statute what our adversaries regard as an element, that the company's "business cannot be conducted with safety to the public and advantage to the stockholders." That does appear later in Section 65 where the Legislature has declared that if upon the inquiry conducted by the Chancellor "it shall appear to the Court that the corporation has become insolvent and is not about to resume its business in a short time thereafter, or that its business has been and is being conducted at a great loss and greatly prejudicial to the interest of its creditors or stockholders, **so that its business cannot be conducted with safety to the public and advantage to the stockholders,**" it may grant relief by injunction and the appointment of receivers. Elements 1 and 2, consisting of past and present losses appear in both places in Section 65 and are expressed in the conjunctive, but the future inability of the company to conduct its business with safety to the public and advantage to the stockholders is introduced adverbially by the word "*so*" and clearly indicates that this future condition is but an inference to be drawn by the Court from the es-

tablishment of past and present losses. The omission of this substance from the earlier portion of the section and the introduction of it in the latter portion *adverbially* indicates the intent of the Legislature that elements 1 and 2 (past and present losses) should be proved to that degree and extent that the Court may in the exercise of its sound judgment say to the defendant company: "*Your business in the past has been conducted at such a great loss and so greatly prejudicial to the interests of your creditors or stockholders and is now being conducted at such loss and prejudice, that it 'appears,' or seems to me, that your business cannot from now on be conducted with safety to the public and advantage to your stockholders.*" In the very nature of things future loss or inability of a company to conduct its business with safety to the public and advantage to its stockholders is not susceptible of the same proof or demonstration as are its past and present losses. One is an accomplished and established fact; the other lies in the lap of the future. The events of yesterday or today can be established with absolute certainty; the events of tomorrow can be anticipated only by the certainty of what has already occurred. When dealing with the probable events of the future, the Courts have no light to guide their feet but the lamp of past experience. Prophecy or divination was not expected of the Chancellor by the Legislature when it enacted the 1912 Amendment, only a rational probability based upon the proven experiences of the past. In this connection it will be observed that while Section 65 speaks of elements 1 and 2 (the past and present conditions) as the conduct of business "at a great loss and greatly prejudicial to interest of its creditors or stockholders," it omits that language in dealing with the future

condition. The Statute does not require that it shall appear to the Chancellor that in the future the company's business will be conducted at a great loss and greatly prejudicial to the interests of creditors and stockholders, but only that the company's business *"cannot be conducted with safety to the public and advantage to the stockholders."* It is no strained construction of the Legislative intent to say that the Legislature intended that when a company has suffered and is suffering great loss in its business to the prejudice either of its creditors or stockholders, the Court might step in and say "your history and experiences are such that it is not safe for us to permit you to continue your operations; it is not safe for your stockholders who have already invested their money in your enterprise and it is not safe for the general public whose money you may yet enlist or ensnare." The corporation is purely the creature of the State, its creation permitted in the interest of commerce and the public good, but with a reservation, ever present, that when the career of the company has proved the folly of its existence, the State may, in the interests of the same public, terminate what has become a menace to the body politic.

We shall go no further than we have in discussing Section 65 of the Corporation Act, as amended in 1912. We have perhaps already unnecessarily discussed the significance of the amendment. It is not before this Court and can only become involved in an appropriate appeal from any order or decree appointing Statutory Receivers. *So far as this present appeal goes, no such appointment was ever made, for the Final Decree embodying such appointment still resides where it was entered, in the Court of*

Chancery. If that Final Decree were up for review, we would deem it appropriate to point out that the several New Jersey cases mentioned in our adversaries' Brief, where the 1912 amendment was involved, are authorities decidedly in favor of the appointment of Statutory Receivers under the facts present in this case, proved before the Chancellor. We think the appellant must have realized this for there is no other rational explanation for its election to review an Interlocutory Decree appointing Equity Receivers in an emergency and its failure to review a superseding Final Decree appointing Statutory Receivers.

Complainant's bill was filed the day following the closing of the three Passaic banks by the Banking Commissioner. How much of an emergency existed has been sufficiently indicated in our statement of facts. How grave the situation was and how it impressed the Court below very amply appears in the Court's several opinions appearing in the record of the case:

> Opinion of August 8, 1929, at page 61.
> Opinion of May 29, 1930, at page 65.
> Reasons at page 596.

Complainant's bill, amendment to bill, proofs and exhibits presented that situation to the Court below. The facts warranted the Court in doing either of two things; to appoint Statutory Receivers or to appoint Equity Receivers to cope with the emergency. Complainant's bill prayed for both forms of relief, in the alternative. UPON THAT BILL THE DEFENDANT WENT TO TRIAL. It was not then suggested that the bill was multifarious, nor was the jurisdiction of the Court questioned. The defendant litigated the *entire* case presented by the bill. It drew no distinction between the bill as it addressed itself

to the statutory powers of the Court and the bill as it sought relief under the general and inherent equity power of the Court. The defendant, by its appearance, participation in the cause, and resistance to *all* the relief sought, put in issue the *entire* bill of complaint and every theory that it involved. The defendant never claimed that subpoena to answer was necessary. Its appearance in the cause obviated the need of any subpoena, if such need ever existed. Now for the first time, on this appeal, a distinction is sought to be drawn between the bill as an application for a summary hearing and the bill as inaugurating a common suit in Chancery.

When the proofs were all in and the defendant rested at the August, 1929 hearing, the Chancellor found that a proper case had been made out for the appointment of Statutory Receivers. Section 65 provides that in such a posture of the case the Court "may" issue an injunction to restrain the corporation from doing the things specified in the Statute. Section 66 of the Corporation Act provides that "the Court of Chancery, at the time of ordering said injunction, or at any time afterwards, may appoint a receiver or receivers or trustees for the creditors and stockholders of the corporation, etc." There was no duty resting upon the Court *at that time to appoint receivers under the Statute.* By the very express language of Section 66, it might do so "at any time afterwards." In the exercise of a sound judicial discretion, Vice-Chancellor Backes determined that it might be for the best interests of the stockholders and creditors of the defendant company not to issue the injunction and make the appointment *then,* but to defer action until some future time. His purpose in doing so is manifest in the many hearings conducted by him

thereafter and in the many appeals and efforts directed to the stockholders to get from them a dependable expression of their wishes concerning the continuance of the company. Our adversaries do not conceal their charge that in August of 1929 the Vice-Chancellor's effort was "to railroad the defendant company into a receivership without affording its 15,000 stockholders an opportunity to be represented by counsel, or in person, and to contest the proceedings." (Appellant's brief, page 131.) Without here commenting upon the character of this assertion, suffice it to say that a perfect case for the appointment of Statutory Receivers and for winding up the company was presented to Vice-Chancellor Backes in August of 1929, and yet he stayed his own hand. Why? The answer appears in the order appointing the Equity Receivers (State of Case, page 53), in which the Court, after finding all jurisdictional facts to have been established, finds also that the defendant company is without a board of directors to carry on its business and functions and declares, "but being also of the further opinion that it may be for the best interests of the defendant company that the Statutory Receiver warranted by the court's said findings of fact should not at this time be appointed, but that Receivers in Equity should at this time be appointed to serve, as such, until the further order of this court, and that the appointment of a Statutory Receiver should be deferred and reserved until future application therefor."

Not wishing *at that time* to write the word "finis" to the career of the defendant company, but wishing to see what the future had in store, what in all equity could the Court do? Could it be expected that, failing to appoint Statutory

Receivers no action should have been taken, the Court supinely sit back and allow the deserted company without a board of directors and without management to be tossed about on the tide of disaster that was engulfing it, and to do nothing to avert the threatened closing of the other banking institutions owned by it, and those other disasters that were imminent? The Court took a much broader view of its duty than our adversaries now, after the company has enjoyed the benefits of the Court's timely intervention, insist was within his rightful power. No stronger or more persuasive case involving property has been or can be presented to any court, addressed to its preservative powers, than was the case exhibited to Vice-Chancellor Backes when he appointed the Equity Receivers.

POINT II.

The Chancellor correctly denied the petition of the defendant company to terminate the receivership and to turn over the fund in Court.

The Order appealed from was filed on June 24, 1930 (see State of Case 587). That was after the Court had already appointed Statutory Receivers on May 29, 1930, and the Court had had before it all the proofs and exhibits which were offered on the application for the Statutory Receivers and the resistence thereto, and also on the application to turn the company back. Necessarily it is essential that in its appeal from the Order of June 24, 1930, the appellant present the evidence that was before the Court below upon which it acted in making its Order Denying Restoration. That was not done. We have, however, indicated in our statement of facts that when the Petition to turn back the company was presented the

Company had no Board of Directors and that the persons who had claimed to be a Board had never been elected at any properly constituted meeting, for at no meeting was there present 51% or even a bare majority of the stock of the company issued and outstanding and entitled to vote, as required by the By-Laws of the company.

The consideration by the Court below of the company's petition for restoration was "extra-judicial," as the Vice-Chancellor himself characterized it. There was no duty resting upon him in the then posture of the case to entertain the petition for restoration or to grant the relief thereby sought. Section 69 of the Corporation Act makes provision for the reconveyance of property in the hands of Receivers after certain conditions are found to exist, but that Section by its express terms is limited to the case of a receivership *under the Statute*. The Petition for restoration was presented and the proofs in its support submitted before any Statutory Receivers were appointed and while the Equity Receivers were functioning. Section 69 may not be invoked in a case where Equity Receivers have the trust in hand. If, however, we be in error in this contention, the fact nevertheless remains that that Section does not make it *mandatory* upon the Court ever to take the property out of the hands of the Receivers and return it to the company. This Section provides that "the Court of Chancery may, *in its discretion*, a proper case being shown, direct the Receiver to reconvey to the corporation all its property, etc." Was a proper case shown? Chancellor Walker, in the case of *Bull* v. *The International Power Co.*, had appointed Statutory Receivers, in which action he had been affirmed by the Court of Errors and

Appeals. While the company had not yet been wound up and while the Receiver was still in possession of its property, a Petition was presented by a majority stockholder having for its purpose the restoration of the defendant's property and the discharge of the Receiver. The Chancellor held that when the corporation would repossess itself of its property and resume business, *corporate action* was necessary and "that the owners of a majority of the stock cannot, in the capacity of stockholders only, invoke the aid of the Court in behalf of a scheme to rehabilitate the corporation." The Chancellor referred to the case of *Lehigh Coal & Navigation Co.* v. *Central Railroad Co.*, 5 N. J. L. J. 214, in which Chancellor Runyon said that should the Court deem it advisable to turn over the property to the company, the stockholders must receive it by the hands of the Board of Directors. We quote furthere from the opinion of Chancellor Walker in the *Bull* v. *International Power case* (87 Eq. 1, at page 5):

> "Nor is it any answer to say that the parties preferring the present petition own a majority of the stock of the defunct corporation, and that, therefore, they would control the directors to the end which they desire; for in a meeting of a board of directors there may be a dissenting member whose arguments might convince the majority of the unwisdom of their proposed action. Holcombe *v.* Trenton White City Co., 80 N. J. Eq. 122; affirmed 82 N. J. Eq. 364. It is to be observed in this connection, that while a majority of the stockholders desire the discharge of the receiver and the restoration of the company's property, a minority of the stockholders protest and declare that it is unwise under all the circumstances to permit such action to be taken. Now, at a meeting of the board of directors,

one or more members of that body might protest and convince the majority that the company should be wound up. What the result in such a meeting of the directors of the International Power Company would be I cannot know, but certainly such an application as the one before me should only be made through proper corporate channels after an opportunity has been afforded to thoroughly canvass the matter by the directors, at least, and, probably, by the stockholders also. In other words, it seems to me it would be unwise for the board of directors of an insolvent corporation in the hands of a receiver to petition for the restoration to the corporation of its assets, looking to a resumption of its business, without canvassing the stockholders as to their desire in the premises; for the court, in the end, has to pass upon the whole matter, and it must at least be shown that the corporation itself is desirous of resuming business, not merely that a majority of the stockholders are. In other words, it should appear that the company itself, after formal and deliberate corporate action, is desirous of resuming its business; not that resumption should be thrust upon it. However, this question was not raised in the argument before me, and I will, therefore, proceed to dispose of this matter on its merits."

There was never any petition to the Chancellor from the Board of Directors of the defendant company, nor did the defendant company have, at the time restoration was sought, a duly elected Board of Directors. If, as held by Chancellor Runyon in the *Lehigh Coal & Navigation* case and by Chancellor Walker in the case of *Bull* v. *International Power Co.*, the company can receive its property only through the hands of its Board of Directors, to whom could Vice-Chancellor Backes hand over several million dollars? What answer could be made to the minority

stockholders who clamored for their money and the ten thousand stockholders who were silent because their interests were being looked after by the Chancellor, if, eventually, on a review by the Supreme Court, the election of the directors were held illegal, as in all probability it would be upon a presentation of the facts attending the election of the *pseudo* board. There was another very substantial reason why the petition for restoration had to be denied. The defendant company wanted to resume business under its charter. The type of business for which the company was incorporated and in which it was mainly engaged and in which it lost almost six millions out of the eight millions of dollars of its stockholders' money, viz: that of holding bank stocks in such amounts as to control those banks, was declared illegal by the provisions of the Act of the Legislature, commonly called the Davis Act (see Laws of 1928, Chap. 273, page 688). This Act was approved April 3, 1928, and took effect immediately. The Act has not been repealed. The defendant company's charter which permitted that business antedated the Davis Act. The Petition for restoration was presented long after the Davis Act became operative. To restore the fund to the company and to permit it to engage in its chartered business would be to violate the public policy of the State as declared by the Davis Act The Chancellor had a similar question before him on the petition for restoration in the International Power case (87 Eq. 1, at page 6). In that case Chapter 18 of the Laws of 1913 (forbidding corporations from holding shares of corporate stock of other corporations) had intervened between the time the International Power Company had been organized and the time when restoration of its property was sought. The Chancellor held

that to restore the property to the company would violate the public policy of the State as ascertained and declared by the Statute aforementioned. The Chancellor said:

> "This is not all. There is another cogent reason for its denial. Since February 19th, 1913, a corporation having for its object the holding of stocks and bonds of other corporations could not be formed under the laws of this State. P. L. 1913, p. 32. Public policy forbids the organization of any such corporation. The legislature makes the public policy of the state. Earle *v.* American Sugar Refining Co., 74 N. J. Eq. 751 (at p. 762). If the question whether or not this application should be granted were a doubtful one on the facts, it would properly be refused on the ground that to doubt is to deny, but, in addition, considering the ascertained and declared public policy of the state, I would be moved to deny it, unless the requirements of the act were fully complied with; but, as before remarked, the case on the facts is not one which presents a proper case for the granting of the relief which is sought."

May we before concluding this part of our brief mention that Vice-Chancellor Backes had before him the members of the pseudo board of directors, took their testimony as to their plans for the company's future and inquired into their capabilities. In this case where the losses due to misdirection were colossal and tragic, was he not in the position best able to judge whether or not these nine men, who offered themselves as directors and who thought they could resuscitate the company, were capable of producing that result? His denial of their petition indicates his conclusion in this respect.

POINT III.

The Order of Vice-Chancellor Backes of July 1, 1930, allowing partial compensation to the Receivers and their counsel was properly entered.

The Court allowed partial compensation to the Receivers aggregating $20,000 and to counsel for the Receivers the sum of $10,000. No one knew better than Vice-Chancellor Backes what labors had been performed by Receivers and counsel in the administration of the trust, for the Court was in almost daily touch and conference with the Receivers and their counsel concerning the many important and vexing problems that had to be solved. The liquidation of the frozen assets of the defendant company was due to the combined efforts of the Court and its Receivers. Many proceedings were taken and much litigation arose out of the sale of the bank stocks, all of which was attended to by counsel. The labors of the Receivers and counsel covered a period from July 25, 1929, to July 1, 1930. About half a million dollars which seemed hopelessly lost in the Lebanon and Perth Amboy banks alone was saved to the company and reduced to cash. Efforts of counsel resulted in the Receivers getting for the Hobart stock $120,000 more than what Weinberger and those appearing for the company at the hearing before the Court were willing to let the stock go at. The Court had before it its own knowledge of the work done and, while it is true that Stamler's cross examination was not completed, it was wholly unnecessary for the Court to conduct any examination to inform itself.

Much has been said in appellant's brief about the Court below cutting off the inquiry into the services rendered by Receivers and counsel. The Chancellor has, by rule of Court, defined the duty of his Vice-Chancellors with respect to allowances. Rule 111-f reads as follows:

> "The Court in making allowances to receivers shall consider the extent and value of the actual services rendered; and the pains, trouble and risk incurred by them in the discharge of their duties in conducting and settling the receivership, having regard also the avails gotten for the trust estate; and in making allowances to solicitors or counsel shall consider the extent and value of the actual services to the receiver by the solicitor or counsel, having regard to the avails gotten for the receiver by and through their endeavors, and the court may examine the receiver, solicitor or counsel on oath or otherwise, if it seems requirable to ascertain the facts, matters and things upon which such allowances should be made to depend."

It did not seem "requirable" to the Court below to continue the examination of its officers. It knew of the pains and troubles in the discharge of the work and the avails produced. It used that knowledge.

Counsel for appellant in his Brief concerns himself with the fact that application was made by the Receivers and counsel for aggregate allowances of $105,000. We take it that this Court is not concerned with what has been asked but rather with what has been allowed. As against the scurrilous intimations contained in Point VII (pages 166 to 172) of our adversary's Brief, we point to the reasons given by the Court below for granting to the Receivers and counsel allowances aggregating $30,000. Let the record in the Court below, omitted by our adversaries,

to be laid before this Court. We respectfully submit that the mere examination of the record will demonstrate that the allowances made are by every test of reason and fairness but partial compensation for the services rendered and the results produced. A certain sense of delicacy forbids pursuing this argument further but fairness to to the Court below and to its officers in the administration of the trust requires that our adversaries do not delete the record but lay it fully and fairly before this reviewing Court.

Our adversaries' Brief sets up the allowances made by the Court below in the Mayer suit two years ago and in the suit to restrain the merger with the Equitable Financial Corporation. Counsel omits to inform this Court that the allowances in the Mayer suit were fixed by the defendant company itself, recommended by its Board of Directors, and that the allowances were made upon that recommendation. Is this omission fair to the Court below, assuming that the enumeration of those allowances is at all material on the present appeal? Counsel criticizes the allowance of $13,000 made in the suit to prevent the merger but omits to state that of that amount $3,000 represented actual disbursements and omits to present the record which would enable this Court to determine whether a net allowance of $10,000 was justified. Is this fair to the Court below?

The whole of the defendant's Brief on the subject of fees is an ill-concealed personal attack on the Court below and far afield from any meritorious question involved.

POINT IV.

Appellant's contention that the Bill of Complaint is multifarious.

This objection is not available to appellants for the following reasons:

1. The point was never raised in the Court below. No motion was ever addressed to the bill of complaint.

2. The defendant went to trial on the bill of complaint without objection as to its form, structure or content.

3. This Court held in the case of Gierth *v.* Fidelity Trust Co. *et al.*, (93 Eq. page 163) that under recent Statutes and Rules "now governing the Court of Chancery the old-time objection of multifariousness has been, substantially, done away with.

POINT V.

Our adversaries charge error in the reception by the Vice-Chancellor of evidence relating to the conduct of the company's business preceding the dismissal of the bill of complaint in the Mayer suit.

We can well appreciate the reasons why appellant should like to have excluded from consideration its corporate conduct from the time of its incorporation down to the time the Mayer bill of complaint was dismissed. We know of no rule of evidence that makes proof of that corporate conduct inadmissible. There never was any final decree in the Mayer suit. The defendant company and the director-defendants in that suit must have been happy to avoid a final finding in that suit. Weinberger's settlement of two mil-

lion, five hundred thousand ($2,500,000) dollars demonstrates this. How, therefore, can the Mayer suit be *res adjudicata* on any question presented by the bill in the present case?

The complainant in his bill charged corporate mismanagement and corruption. He also charged that the company's business had been for a long space of time conducted at a great loss. This last allegation, coupled with others, brought the case within the scope of Section 65 of the Corporation Act. There is nothing in that section which limits the period of time within which the company's business must be conducted at a loss. The history of the company, from the time of its incorporation, was that of steady and progressive losses and of persistent lootings or attempted lootings of the company. Was not the whole of that history logically relevant to the complainant's complaint? If logically relevant, and not barred by any positive rule of evidence, then it was legally admissible.

POINT VI.

Our adversaries charge that the Order Appointing Equity Receivers is void because no notice was given to the stockholders of the defendant company of the proceedings.

Our adversaries rely upon Chancery Rule 111b. That Rule is as follows:

> IIIB. "If an 'equity' or 'custodial' receiver be appointed for a corporation, partnership or individual, *without notice*, there shall be an order addressed to the stockholders and creditors of the corporation, or to the creditors of the partnership or individual, as the case may be, to show cause why the receiver and receivership should not be continued or made permanent."

We have italicized two words in the quoted rule. Those words "without notice" are vital. They have reference to the notice spoken of in the rule immediately preceding, viz: Rule 111a. That Rule is as follows:

> IIIA. "No receiver shall be appointed for any corporation, partnership or individual under the general equity power of this court, commonly called an 'equity' or 'custodial' receiver, in any suit, nor shall any order of decree for a preliminary injunction be issued, or any temporary restraining order be granted, therein, without notice to, or the consent of the defendant, unless it shall clearly appear from the duly verified facts that immediate and irreparable injury will result before notice can be served and a hearing had therein; and no receiver shall be appointed for an insolvent corporation under power conferred upon this court by the statute without notice to, and an opportunity to be heard by, the defendant."

The notice contemplated by Rule 111b is *notice to the defendant.* No notice of the appointment of an "equity" or "custodial" receiver for a corporation need be given to stockholders where the company itself has had notice under Rule 111a. *The company in the case at bar had notice.* The court's order to show cause of July 25, 1929, was served upon it and it appeared by counsel and defended.

The practice commonly and properly employed in a receivership case is for an order to show cause to be served upon the defendant company. Upon its return the matter is summarily heard and if receivers are appointed, notice is then given to all the creditors and stockholders to show cause why the receiver should not be continued permanently or why some other person should not be appointed receiver. Else every ap-

plication for a receiver would involve in the first instance notice to all the creditors and stockholders of the company, a procedure impossible of performance by the complainant at the time of the initiation of the suit.

The kind of notice contemplated by our adversaries' contention is not required by the Statute. Section 65 of the Corporation Act provides that the Court "upon such notice, if any, as the court by order may direct, may proceed in a summary way to hear the affidavits, etc." Only the Statute, and not the Chancery Rules, controls the Chancellor. He may suspend the rules in his own judgment and so may any Vice-Chancellor once the Vice-Chancellor has properly taken jurisdiction of the cause. Our adversaries refer to the case of *Shaw* v. *Standard Piano Co.* (87 Equity, page 350). There this Court, speaking by the late Justice Kalisch, affirmed the appointment of a statutory receiver made without notice either to the defendant company or its stockholders. The appointment had been made by Vice-Chancellor Howell without any notice of any kind to the defendant company. Thereafter an application was made by the defendant to open the order of appointment. That application was heard by Vice-Chancellor Foster, who held that under the Corporation Act a receiver could be made without notice to the defendant company. This Court held that so much of Section 65 of the Corporation Act as authorized the appointment of a receiver without notice to the defendant corporation was unconstitutional. The appointment in that case was nevertheless affirmed by this Court because it did not appear that the defendant company had been aggrieved by the improper procedure. **The company appeared and defended the suit and proceeded to**

a hearing on the meritorious questions as to its insolvency and the appointment of a receiver. This appearance and defense operated, of course, to cure what would otherwise have been a fatal objection to the Court's jurisdiction. In the case at bar, not only did the company appear and defend on the merits but the following additional circumstances are present:

(a) Notice of the Court's Order to Show Cause was duly served on the defendant company. It was pursuant to this notice that it appeared and defended.

(b) Notice of the appointment of the Equity Receivers was given to all the stockholders and creditors in the various proceedings inaugurated by the Receivers from time to time with respect to the trust fund. No stockholder or creditor appeared in opposition to the appointment.

(c) Before the Court appointed Statutory Receivers, notice by formal Order to Show Cause was duly given to the defendant company and its stockholders and creditors.

The case of *Morse* v. *Metropolitan Steamship Co.*, (87 Equity, page 217) is illuminating. This was a suit for the appointment of equity receivers because of gross abuse of trust on the part of and dissention amongst the directors and the stockholders and because of the absence of a properly constituted board of directors. Vice-Chancellor Lane held that in such a situation the court could under its general equity power appoint a receiver. He added that:

"I am willing to say that if it were necessary to sustain the jurisdiction of this court upon the present bill, I would, as presently advised, hold that this court may, if the circumstances indicate that the corporation cannot properly be conducted by reason of the fact that no competent, proper board of

directors can ever be elected, under its general equity power, actually wind up the corporation and divide its assets."

An appeal was taken to this Court. (See 88 Eq. 325.) Justice Kalisch wrote the opinion of this Court. In this opinion it appears that the bill was originally filed for the appointment of equity receivers and that after all the testimony was in an amendment was allowed averring loss of business within the amendment of 1912 to Section 65 of the Corporation Act. Thereupon an order was made appointing a statutory receiver. *This order was made without notice to the defendant.* This fact was made one of the bases of appeal. This Court held that the objection that the statutory receiver was appointed without notice rested upon unsubstantial grounds because, while the appointment was without notice to the defendant, it appeared that the order of appointment was subsequently confirmed after due notice. This Court held that the appointment of the receiver could be sustained upon the second order made after notice, providing it were a proper case for the appointment of a receiver. On this question of notice this Court affirmed Vice-Chancellor Lane.

Applying the *Morse* v. *Metropolitan Steamship* case to the case at bar, it is apparent that there is no substance to appellants' objection. Even if notice to stockholders and creditors had been necessary in the first instance and had been omitted it was subsequently supplied when notice was given to the defendant and all its creditors and stockholders of an Order to Show Cause why statutory receivers should not be appointed, upon the return of which not only the defendant but some of the noticed stockholders appeared and litigated the application on its merits.

POINT VII.

Our adversaries attack the constitutionality of the 1912 Amendment of Section 65 of the Corporation Act.

On this point we deem it sufficient to say that this Court had before it twice for consideration the constitutionality of Section 65 of the Corporation Act as amended by the Laws of 1912. In the case of *Shaw* v. *Standard Piano Co. ubi supra,* that Section was held to be unconstitutional only to the extent that it authorized the appointment of a receiver *without notice to the defendant.* This Court declared that this unconstitutional taint was separable from the other provisions of the Section and did not affect the validity of those other provisions. While this Court did not have directly before it any question raised about *stockholders being entitled to notice* the facts in the record show that no notice of any kind had been given, *either to the defendant company or its stockholders.*

In the case of *Morse* v. *Metropolitan Steamship, ubi supra,* this Court declared Section 65 of the Corporation Act to be unconstitutional only in respect to its authorizing the appointment of a receiver without notice to the defendant company. The record of this case discloses no proof of notice to stockholders. In that condition of the record it is fair to assume that no notice to stockholders was given. Yet this Court limited the constitutional invalidity to the omission to give notice to the defendant company itself.

While our reference to the last two cited cases is authority by inference only, we have in this state direct authority for the proposition that the stockholders are not necessary or proper parties on a bill or petition for the appointment of a receiver under the Statute.

In the case of *Pierce* v. *Old Dominion Copper Mining and Smelting Co.* (67 Eq. 399) Vice-Chancellor Stevenson had before him a bill for the appointment of receivers for the cause of insolvency. The case was heard by him in 1904. In his opinion he carefully analyzes the character of the statutory summary proceeding. We quote from that opinion two illuminating excerpts:

> "The action is commenced either by bill or by petition. No process ever need be issued and no process in case the proceedings are begun by petition is prescribed by the statute. The court gains jurisdiction by the giving of "reasonable notice" to the defendant corporation. Upon service of such reasonable notice on the return day of the order to show cause, the corporation is as much under the jurisdiction of the court as if a subpoena or a summons had been served upon it by a sheriff or other public officer. Every state has the power to prescribe the reasonable notice which shall be given in order to subject defendants to the jurisdiction of its courts and it is of no consequence what the form of such notice may be. Mackay *v.* Gordon, 34 N. J. L. (5 Vr.) 286, 291; Hervey *v.* Hervey, 56 N. J. Eq. (11 Dick). 424, 426."
>
> "Before leaving the consideration of the essential nature of our statutory equitable action against an insolvent corporation, it is important to observe that the almost uniform practice has been to make the corporation the sole defendant in the suit.
>
> "In some reported instances, another defendant has been joined with the alleged insolvent corporation without objection. American Ice Machine Co. *v.* Paterson Steam &c., Co., 22 N. J. Eq. (7 C. E. Gr.) 72; Goodheart *v.* Raritan Mining Co., 8 N. J. Eq. (4 Halst.) 73. In these cases, however, and in others not reported, where such joinder has

> occurred, the additional defendant has been brought in, I think, uniformly, merely because some injunction was prayed for against him in aid of the forfeiture proceedings against the defendant corporation." * * *

Thompson in his Commentaries on the Law of Corporation states the rule as to who are necessary parties to the application for appointment of a receiver, as follows:

> "The corporation is, of course, a necessary party defendant, and in some cases it is the only necessary party. The stockholders are not necessary parties unless some relief is sought against them. Even where the governing statute authorized the court to appoint a receiver 'after a full hearing of all parties interested,' it was held that neither the stockholders nor the creditors were necessary parties, but that nothing further was intended by the statute than that the court should have before it, at the hearing, all such parties as, by the general rules of chancery procedure, are deemed necessary and proper parties; and the court added: 'Under this construction of the act, the stockholders might or might not be necessary parties, depending altogether upon the circumstances in each particular case.' Therefore, in a subsequent proceeding by a receiver against stockholders to enforce, for the benefit of creditors, the payment of what is due by them in respect of their shares, they cannot defend on the ground that they were not made parties to the suit in which he was appointed receiver." * * *
>
> (Thompson Vol. 5, Section 6874, page 5445.)

The United States Supreme Court in the case of *Hawkins* v. *Glenn,* (131 U. S. p. 319) held that in a proceeding in equity to wind up a corporation and to assess its stockholders so far as is necessary for the payment of its debts, it is not necessary to the validity of an assessment

that the stockholders should be made parties; and hence it is no defense on the part of a stockholder, when sued by the receiver or trustee, to enforce the assessment, that the order of the court by which it was made was in a proceeding to which he was not a party. Chief Justice Fuller, speaking for the Court (at page 329) said:

> "We understand the rule to be otherwise, and that the stockholder is bound by a decree of a court of equity against the corporation in enforcement of a corporate duty, although not a party as an individual, but only through representation by the company.
>
> A stockholder is so far an integral part of the corporation that, in the view of the law, he is privy to the proceedings touching the body of which he is a member. Sanger *v.* Upton, 91 U. S. 56, 58, in which case it is also said: 'It was not necessary that the stockholders should be before the Court when it (the order) was made, any more than that they should have been there when the decree of bankruptcy was pronounced. That decree gave the jurisdiction and authority to make the order.' "

See also cases of *Glenn* v. *Liggett* and *Glenn* v. *Taussig* in U. S. Supreme Court (135 U. S. 533).

We beg to urge the further view that a suit for the appointment of a receiver over a company, either to conserve or liquidate its property, is a class suit and that in the absence of fraud all the stockholders are present in the cause by representation and are bound by the result. Mr. Justice Fuller, speaking for the United States Supreme Court in the *Hawkins* v. *Glenn* case, *ubi supra,* said:

> "It cannot be doubted that a decree against a corporation in respect to corporate matters, such as the making of an assessment in the discharge of a duty resting on

> the corporation, necessarily binds its members in the absence of fraud, and that this is involved in the contract created in becoming a stockholder."

Whatever else counsel may have said in their Brief, they have not yet suggested that the Bernstein suit, under which the Receivers were appointed, was collusive or otherwise fraudulent.

It is significant that with the great number of corporations having their situs within this State and the multitude of cases brought for the appointment of receivers under our Corporation Act, we have been unable to find a single case nor do our adversaries point to one in which it was claimed that the Statute was unconstitutional because it provided for no notice to stockholders. By the same reasoning as counsel employed in his brief, it might be argued that every attachment suit against a corporation or even any ordinary action looking to ultimate satisfaction out of the corporate property should be upon notice to stockholders, for it involves the seizure and disposition of corporate property affecting the vested property rights of stockholders.

An examination of the several other grounds mentioned under Point IV of our adversaries' Brief, in support of his contention that Section 65 of our Corporation Act is unconstitutional, shows that those grounds are without substance. No authorities are cited, either of this State or of any other jurisdiction, to support any of the contentions there advanced. The Statute is neither confiscatory nor discriminatory, nor does it take property without due process of law. Neither can we understand how the vagueness and uncertainty attributed by our adversaries to the language of Section 65 operates to make that section unconstitutional. At most such vagueness and uncertainty, if present, calls for judicial definition and construction.

POINT VIII.

There was no error in the admission or exclusion of testimony.

Our adversaries in Point V of their Brief (page 143) contend that the Court committed error in the admission or exclusion of testimony or otherwise in the conduct of the cause and they specify eight objections. An examination of each instance, in relation to the whole record, when that record is *fully* before the Court, will indicate that no admissible evidence, decently and respectfully offered, was rejected by the Court below. The record will show that every reasonable opportunity was afforded to the defendant to present its defense. We do not think that the Court was obliged after the hearing had consumed several days to keep the case open for the production of witnesses by the defendant when those witnesses had been available to the defendant. If counsel for the defendant desired to offer the testimony of Mr. Jelin, he could have subpoenaed him. See colloquy between Court and counsel on page 322 of State of Case. Mr. Corbin rested for the company. Mr. Weinberger asked for an opportunity to cross examine Mr. Jelin and Mr. Bernstein on their affidavits. The Court ruled that the hearing had gone beyond the affidavits. Mr. McGinnis informed the Vice-Chancellor that Mr. Jelin had not been in Court (see page 322 of State of Case:

> "The Court: You had the process of the Court at your command.
>
> Mr. McGinnis: He was practically in charge of the concern.
>
> The Court: Then you should have had him here. He was an available witness to you and if he was an essential one counsel should have had him here. Is that all?

Mr. McGinnis: Aside from that, that is all. We do feel Bernstein's affidavit was not an affidavit in good faith. We believe Jelin who had managed this concern for seven months following the reorganization last September 1, and for four months thereafter—

The Court: Please don't—

Mr. McGinnis: Well, your Honor has asked me—

The Court: I asked you whether you want to put on any more witnesses. If you haven't got Jelin here don't comment on what he might or might not say.

Mr. McGinnis: We haven't him here.

The Court: The testimony is closed. I will hear arguments on Thursday next when the order to show cause on the confirmation or rejection of the sale of the Hobart stock is to be brought to my attention."

POINT IX.

Brief of Intervening Stockholder, Ginsberg.

We doubt very seriously the right of Ginsberg to intervene in this appeal. He is not a party to the cause and could not have been joined properly as a party. His rightful presence in the suit is only by means of representation either through the complainant, who sues for the benefit of all stockholders or through the defendant, who resists as the representative of all its stockholders. Ginsberg did not appear in the court below personally or by counsel. He has not asserted that the suit is collusive or otherwise fraudulent. Before giving notice of appeal and filing his petition of appeal in this case he neither sought nor secured from this Court or from the Court below the right to intervene. The appeal is what the Court below in his opinion called "an inspired appeal."

Counsel for the appellant, Ginsberg, states that he has read with considerable care and interest the brief filed in behalf of the company and that he is firmly convinced of the soundness and accuracy of the statements, reasonings and legal conclusions set forth in that brief. He begs leave by reference to urge the same arguments and authorities and then presents two additional points. We find nothing in Point 1 of his brief that was not discussed in the brief filed for the defendant company, all of which we have sought fully to answer in this brief.

We think that Point II of Ginsberg's brief is of such character and presented in such manner as to call for no answer from us, except that of censure. That we prefer to omit from this argument.

CONCLUSION.

We respectfully submit that the Court below soundly and correctly exercised its jurisdiction in the making of the three orders under review; that there is abundant evidence to sustain each of those orders and that each is free of legal error.

We respectfully ask that the orders under review be sustained.

Respectfully submitted,

LEBER & RUBACK,
Solicitors for and of Counsel
with Complainant-Respondent.