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S. 2.	Advance Proof of Pamphlet or Prospectus from office of Universal Finance Corporation	38	729
S. 3.	Pamphlet or Prospectus from office of Financial Investment Corporation offering unsold balance of $750,000 of preferred stock, at a price of $16.00 per share	38	733
S. 4.	Form letter without date on letterhead of Financial Investment Corporation, signed by W. F. Cawthorne, Treasurer	39	742
S. 5.	Pamphlet entitled "The Treasure Chest of Modern Finance" (issue of December, 1928)	39	744
S. 6.	Photostatic copy of series of radio talks	42	755
S. 7.	Transcript of statement of Alexander Gordon Edwards, taken at Prosecutor's Office December 27, 1928	49	793
S. 8.	Statement of Walter F. Cawthorne taken at Prosecutor's Office December 27, 1928	49	812
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S. 12.	Duplicate subscription contract of Joseph F. Armour, dated July 20, 1928. (Same as D. 3 for Identification)	86	847
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		Off'd	P't'd
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S. 21 for Identification.	Minutes of Universal Finance Corporation of Directors' Meeting June 12, 1928	397	
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S. 23 for Identification.	Statement of profit and loss account of Universal Finance Corporation for September and October, 1928, and for the four months ending October 31, 1928	592	

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D. 2.	Subscription contract of Joseph S. Armour, dated July 20, 1928	82, 382	873
D. 3 for Identification.	Duplicate subscription contract of Joseph S. Armour, dated July 20, 1928. (Same as Exhibit S. 12)	83	874
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		Off'd	P't'd
D. 5.	Subscription contract of Anna MacDonald and William MacDonald, dated December 3, 1928	102, 435	877
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D. 7.	Four subscription blanks of John Thomas, dated September 5, September 5, September 14 and September 24, 1928	112, 614	879
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D. 11.	Two subscription contracts of Helen Eva Pearsall, dated October 15 and December 12, 1928	149, 446	887
D. 12.	Bond of Public Service Finance Corporation (changed to Universal Finance Corporation) and of National Surety Co., dated April 3, 1928, and filed April 5, 1928	168, 523	889
D. 13	for Identification. Bond of Universal Finance Corporation with National Surety Company as surety; dated February 25, 1929; filed March 1, 1929	168	890
D. 14.	License under Chapter 49, Laws of 1914, for the year ending March 1, 1929; dated April 5, 1928—No. 554; issued to Public Service Finance Corporation and transferred to Universal Finance Corporation and address changed from 810 Broad Street to Broad and Market Streets, Newark, by endorsement dated July 2, 1928	169, 523	890

		Off'd	P't'd
D. 15.	Document entitled "Information, Rules & Regulations Relating to the Business of Making Small Loans," issued by the Department of Banking and Insurance of the State of New Jersey, dated August 31, 1922	169, 614	893
D. 16.	Document entitled "Information, Rules & Regulations Relating to the Business of Making Small Loans," issued by the Department of Banking and Insurance of the State of New Jersey, dated August 31, 1922, including additional rules issued December 26, 1928	170, 614	897
D. 17.	Additional rules and regulations relating to business of making small loans under Chapter 49, Laws of 1914, issued by the Bureau of Banking of the Department of Banking and Insurance of the State of New Jersey, dated December 26, 1928	170, 614	902
D. 18.	Paper entitled, "Universal Finance Corporation Marketable Securities. June 30, 1928"	222, 473	904
D. 19.	Certificate of Incorporation of Public Service Finance Corporation, dated March 23, 1928; and Certificate of Amendment changing name to Universal Finance Corporation and increasing capital stock, dated June 22, 1928	256	906
D. 20.	Agreement between Public Service Finance Corporation and Alexander G. Edwards for sale of certain preferred stock of Public Service Finance Corporation, dated March 28, 1928	300	916
D. 21.	Sample of certificate of preferred stock of Universal Finance Corporation. (Same as Exhibit D. 4)	316	918

	Off'd	P't'd
D. 22 for Identification. Letter "To Whom It May Concern" from New Jersey National Bank & Trust Co. of Newark, N. J., dated November 26, 1928	319	919
D. 23. Memorandum prepared by defendant Dewi T. Evans and identified by him and also by defendant Dale D. Hollenbaugh, as containing the figures which were presented to meeting of Board of Directors of Universal Finance Corporation held June 14, 1928	385	920
D. 24. Minutes of meeting of Board of Directors of Universal Finance Corporation of December 5, 1928	386	921
D. 25 for Identification. Photograph of Broad and Market Streets, identified by defendant Alexander G. Edwards	364	922
D. 26. Certificate of Incorporation of Financial Investment Corporation, dated June 8, 1928	422	923
D. 27. Subscription contract of Alexander Reid, dated November 20, 1928	457	932
D. 28. Subscription contract with Alexander Reid, dated December 11, 1928	459	933
D. 29. Lease from Market and Broad Realty Corporation to Public Service Finance Corporation, dated June 1, 1928, for third floor of building on southwest corner of Broad and Market Streets, Newark, for the term of 7 years and 11 months, commencing June 1, 1928	521	934
D. 30. Pamphlet entitled "Some Prominent Men on the Necessity for Industrial Banking (Popularly Termed the 'Small Loan Business')"	525	947
D. 31 for Identification. Balance sheet of Universal Finance Corporation as of March 30, 1929, with certificate of audit by Haskins & Sells	529	958

	Off'd	P't'd
Not marked. Files of the Court of Chancery in the case wherein Edward L. Katzenbach, Attorney-General, is complainant and Universal Finance Corporation and Financial Investment Corporation are defendants	286	960
Not marked. Files of the Court of Chancery in the case wherein Samuel Klein is complainant and Universal Finance Corporation is defendant	297	1033

WRIT OF ERROR.

(Returnable January 15, 1931.)

NEW JERSEY COURT OF ERRORS AND APPEALS.

NEW JERSEY, *ss.*

The State of New Jersey to the Chief Justice and other Justices of
(SEAL) our Supreme Court of Judicature,
GREETING:

Because in the record and proceedings and also in the affirming of a judgment and conviction on a plea of not guilty in a certain plaint which was in our said Supreme Court of Judicature before you, between Alexander G. Edwards, Dale D. Hollenbaugh and Dewi T. Evans, plaintiffs-in-error, and the State of New Jersey, defendant-in-error; upon a certain indictment against said Alexander G. Edwards, Dale D. Hollenbaugh and Dewi T. Evans, in Newark, County of Essex, in the Court of Oyer and Terminer for said County of Essex, for conspiracy to cheat and defraud divers persons by making public sale by means of false pretenses of the preferred stock of the Public Service Finance Corporation, afterward known as the Universal Finance Corporation, at a price which was fictitious and above the actual and market value thereof;

Pro ut the said indictment, manifest error hath intervened to the great damage of the said Alexander G. Edwards, Dale D. Hollenbaugh and Dewi T. Evans, as by their complaint we are informed; we being willing that the error, if any

there shall be, shall in due manner be corrected and full and speedy justice be done to them, the said Alexander G. Edwards, Dale D. Hollenbaugh and Dewi T. Evans, in this behalf, do command you that if judgment be thereon given and affirmed, then you distinctly and openly send under your seal, the record and proceedings thereof and the plaint aforesaid with all things touching the same including the entire record of the proceedings had upon the trial of the cause, to our Court of Errors and Appeals in the last resort in all causes, at Trenton, on the fifteenth day of January next, together with this writ; that the record and proceedings aforesaid may be inspected and that we may cause to be done thereupon for correcting that error, what of right and according to law and the custom of the State of New Jersey ought to be done.

WITNESS, our Chancellor and President Judge of our Court of Errors and Appeals, at Trenton, aforesaid, the 26th day of December, 1930.

JOSEPH F. S. FITZPATRICK,
Clerk.

HOBART & MINARD,
Attorneys for Alexander G. Edwards.

GEORGE T. VICKERS,
Attorney for Dale D. Hollenbaugh and Dewi T. Evans.

RETURN.

The answer of the Justices of the Supreme Court of the State of New Jersey within named. The record and proceedings whereof mention is within made, with all things touching and concerning the same, we do certify to the Court of Errors and Appeals of said State, in a certain schedule to this writ annexed, as within we are commanded.

WM. S. GUMMERE,
C. J.

ASSIGNMENT OF ERRORS.

(Served January 16, 1931.)

NEW JERSEY COURT OF ERRORS AND APPEALS.

STATE OF NEW JERSEY, *Defendant-in-Error,* *vs.* ALEXANDER G. EDWARDS, DALE D. HOLLENBAUGH and DEWI T. EVANS, *Plaintiffs-in-Error.*	*On Error to Supreme Court.* *Assignment of Errors.*

Afterwards, to wit, on the fifteenth day of January, 1931, come Alexander G. Edwards, by Hobart & Minard, his attorneys, and Dale D. Hollenbaugh and Dewi T. Evans, by George T. Vickers, their attorney, and say that in the record and proceedings aforesaid, and also in giving judgment aforesaid there are manifest errors, in this:

1. Because the Supreme Court erred in giving judgment for the defendant-in-error instead of for the plaintiffs-in-error, for one or more of the reasons assigned in the assignment of errors filed in the Supreme Court and brought up with the record.

2. Because the Supreme Court erred in giving judgment for the defendant-in-error instead of for the plaintiffs-in-error for one or more of the causes specified in the specification of causes for reversal filed in the Supreme Court and brought up with the record.

Assignment of Errors.

WHEREFORE, the plaintiffs-in-error pray that the judgment aforesaid, by reason of the errors aforesaid, may be reversed and that they may be restored to all things that they have lost by reason thereof.

HOBART & MINARD,
Attorneys for Alexander G. Edwards.

GEORGE T. VICKERS,
Attorney for Dale D. Hollenbaugh and Dewi T. Evans.

January 21, 1931.

Formal Joinder filed.

OPINION OF SUPREME COURT.

Filed November 28, 1930.

NEW JERSEY SUPREME COURT.

No. 1, Jany. T., 1930.

THE STATE,

vs.

ALEXANDER G. EDWARDS, *et als.*

Error to Essex Court of Quarter Sessions.

Argued before Gummere, Chief Justice, and Justice Campbell.

For plaintiffs-in-error, George T. Vickers and George S. Hobart.

For the State, Joseph L. Smith, Prosecutor of the Pleas, and Joseph E. Conlon, Assistant Prosecutor.

PER CURIAM.

The plaintiffs-in-error were convicted upon an indictment charging them with a conspiracy to cheat and defraud divers persons by making public sale, by means of false pretenses, of the preferred stock of the Universal Finance Company (a small loan company) at a price which was fictitious and far above the actual market value thereof.

Our examination of the proofs submitted in the court below has led us to the conclusion that the one hundred and seventy-six assignments of

error and grounds for reversal submitted in this cause are each and every of them without legal merit.

The judgment under review will, therefore, be affirmed.

JUDGMENT OF SUPREME COURT.

(Entered December 4, 1930.)

NEW JERSEY SUPREME COURT.

THE STATE OF NEW JERSEY, *Defendant-in-Error,* *vs.* ALEXANDER G. EDWARDS, DALE D. HOLLENBAUGH and DEWI T. EVANS, *Plaintiffs-in-Error.*	*On Writ of Error.* *Remittitur.*

This cause having been submitted at the January, nineteen hundred and thirty, term of this court, by Joseph L. Smith, Esquire, and Joseph E. Conlon, Esquire, attorneys for the defendant-in-error, and George T. Vickers, Esquire, and George S. Hobart, Esquire, attorneys for the plaintiffs-in-error, and the Court having considered the same and finding no error in the record and proceedings in the Essex County Court of Quarter Sessions; *it is*

It is thereupon Ordered and Adjudged that the judgment of the Essex County Court of Quarter Sessions, removed by the writ of error in this cause, be affirmed with costs; and that the record be remitted to the Essex County Court of Quarter Sessions to be proceeded with in accordance with this judgment and the practice of said Court.

On motion of

JOSEPH L. SMITH,
Prosecutor of the Pleas,
Attorney of Defendant-in-Error.

Entered: December 4, 1930.

WRIT OF ERROR.

NEW JERSEY, *ss.*

To Daniel J. Brennan, Esq., Judge of the Court of Quarter Sessions of
(L. S.) the County of Essex,

Because in the record and proceedings and also in giving of judgment upon a certain indictment against Alexander G. Edwards, Dale D. Hollenbaugh and Dewi T. Evans, for conspiracy to cheat and defraud divers persons by making public sale by means of false pretenses of the preferred stock of the Public Service Finance Corporation, after known as the Universal Finance Corporation, at a price which was fictitious and above the actual and market value thereof;

Pro ut the said indictment whereof before you the said Alexander G. Edwards, Dale D. Hollenbaugh and Dewi T. Evans have been indicted and are thereof convicted by a certain jury of the County, taken between the State of New Jersey and the said Alexander G. Edwards, Dale D. Hollenbaugh and Dewi T. Evans, as it is said, manifest error hath intervened to the great damage of the said Alexander G. Edwards, Dale D. Hollenbaugh and Dewi T. Evans, as from their complaint we have received information, we being willing in this behalf to correct the error in due manner, if any there shall be, and that speedy justice be done to them, the said Alexander G. Edwards, Dale D. Hollenbaugh and Dewi T. Evans, command you that if judgment be thereon given, then that you distinctly and openly send under your seal the record and proceedings aforesaid with all things touching the same to our justices of our Supreme Court of the State of New Jersey, on the 19th day of

July, 1929, and this writ, that the record and proceedings aforesaid being inspected, we may further cause to be done thereupon for correcting that error what of right and according to the law ought to be done.

WITNESS, WILLIAM S. GUMMERE, Esquire, our Chief Justice, at Trenton aforesaid the 29th day of June, 1929.

FRED L. BLOODGOOD,
Clerk.

HOBART & MINARD,
Attorneys of Alexander G. Edwards.

GEORGE T. VICKERS,
Attorney of Dale D. Hollenbaugh
and Dewi T. Evans.

Presented in open court, this 1st day of July, 1929.

DANIEL J. BRENNAN,
Judge.

RETURN.

STATE OF NEW JERSEY,
COUNTY OF ESSEX. } *ss.*

I, DANIEL J. BRENNAN, Judge of the Court of Common Pleas and Court of Quarter Sessions in and for the County of Essex, New Jersey, do hereby certify and return to the Supreme Court of Judicature of the State of New Jersey, the indictment, judgment record and proceedings, together with the entire record of the proceedings had at the trial and all things touching and concerning the same as by the within writ to me directed, I am commanded.

IN WITNESS WHEREOF, I hereunto set my hand and affixed the official seal of said court at Newark, N. J., this 17th day of July, 1929.

DANIEL J. BRENNAN,
Judge of the Court of Common Pleas
and Court of Quarter Sessions,
Essex County, N. J.

STATE OF NEW JERSEY,
COUNTY OF ESSEX. } *ss.*

BE IT REMEMBERED, that at a Court of Oyer and Terminer, holden at Newark, in and for the County of Essex on the second Tuesday in December, in the year of our Lord, one thousand nine hundred and twenty-eight, by the Honorable

Return—Indictment.

William S. Gummere, Chief Justice of the Supreme Court of Judicature, of the State of New Jersey, and holding the said Court of Oyer and Terminer, in and for the County of Essex, New Jersey, by the oath of E. W. Wollmuth, Joseph C. Bell, Wm. Brenner, Edward Oertzen, Cornelius R. Berrien, Nathan Myers, Patrick Farrell, M. James Fine, John J. Peckelis, Henry Buerman, Mark Anton, James P. Ingram, Wm. F. Hass, Abram Weinstock, J. Arthur Berry, Percy E. Reeves, Forrest Fettinger, William Hagmann, Otto Bernz, William J. Crecca, A. H. Swett, Jr., Thomas W. Reilly, George Baumann, Jr., good and lawful men of the said County of Essex, duly commissioned and then and there duly sworn and charged to enquire in behalf of the State of New Jersey, in and for the said County of Essex, it is presented in manner and form following, to wit: Essex County, to wit:

The Grand Jurors of the State of New Jersey, for the County of Essex, upon their oath, present that on the twenty-fourth day of March, in the year of our Lord one thousand nine hundred and twenty-eight, at the City of Newark, in the County of Essex aforesaid, Alexander G. Edwards, Dale D. Hollenbaugh and Dewi E. Evans did cause to be incorporated a certain firm under the name of Public Service Finance Corporation for the purpose of engaging in the business of making small loans to borrowers upon personal security; that on the twenty-second day of June, in the year of our Lord one thousand nine hundred and twenty-eight, at the City of Newark,

in the County of Essex aforesaid, the said Alexander G. Edwards, Dale D. Hollanbaugh and Dewi T. Evans did cause the name of Public Service Finance Corporation to be changed to the Universal Finance Corporation; that on the eleventh day of June, in the year of our Lord one thousand nine hundred and twenty-eight, at the City of Newark, in the County of Essex aforesaid, the said Alexander G. Edwards, Walter F. Cawthorne and Charles Perry did cause to be incorporated a certain firm under the name of Financial Investment Corporation for the purpose of engaging in the business of selling the preferred stock of the Universal Finance Corporation.

And the Grand Jurors aforesaid, upon their oath do further present that on the twenty-eighth day of March, in the year of our Lord one thousand nine hundred and twenty-eight, at the City of Newark, aforesaid, Alexander G. Edwards, Dale D. Hollenbaugh, Dewi T. Evans, Walter F. Cawthorne and Charles Perry did conspire, confederate and agree together to cheat and defraud divers persons to the Grand Jurors aforesaid unknown, by making public sale by means of false pretenses of the preferred stock of the Public Service Finance Corporation, later known as the Universal Finance Corporation, at a price which was fictitious and above the actual and market value thereof.

Return—Indictment.

And the Grand Jurors aforesaid, upon their oath, do further present that in execution of said conspiracy and agreement and to effect the object thereof afterward, on the first day of July, in the year of our Lord one thousand nine hundred and twenty-eight, at the City of Newark, in the County of Essex aforesaid, the said Dewi T. Evans and Dale D. Hollanbaugh caused to be paid in dividends to the then holders of preferred stock of the Universal Finance Corporation, the sum of twelve hundred and eight dollars and seventy-five cents, although said amount had not theretofore been earned by said company.

And the Grand Jurors aforesaid, upon their oath do further present that in further execution of said conspiracy and agreement and to effect the object thereof afterward, on the first day of July, in the year of our Lord one thousand nine hundred and twenty-eight and on other days between that day and the day of the taking of this inquisition, at the City of Newark, in the County of Essex aforesaid, the said Alexander G. Edwards, Dale D. Hollanbaugh, Dewi T. Evans, Walter F. Cawthorne and Charles Perry, did disseminate advertising literature to divers persons to the Grand Jurors aforesaid unknown throughout the County of Essex aforesaid, and did cause to be delivered over the radio, addresses advertising the sale of the preferred stock of the Universal Finance Corporation,

wherein it was falsely pretended and represented that the Universal Finance Corporation was under the supervision of the Department of Banking and Insurance of the State of New Jersey, that it was under bond to the State of New Jersey, that the stock thus sought to be sold was preferred stock upon which was payable cumulative dividends at the rate of six per cent. annually, participating in fifty per cent. of the net earnings, and that said preferred stock was paying dividends at the rate of ten per cent. annually which dividends were being paid out of the earnings of said corporation; whereas in truth and fact, as the said Alexander G. Edwards, Dale D. Hollanbaugh, Dewi T. Evans, Walter F. Cawthorne and Charles Perry then well knew, the said Universal Finance Corporation was not under the supervision of the Department of Banking and Insurance of the State of New Jersey, and was not under bond to the State of New Jersey and the stock thus sought to be sold was not preferred stock upon which was payable cumulative dividends at the rate of 6 per cent. annually, participating in fifty per cent. of the net earnings and paying dividends at the rate of ten per cent. annually out of the earnings of said corporation.

Return—Indictment.

And the Grand Jurors aforesaid, upon their oaths do further present that in further execution of said conspiracy and agreement and to effect the object thereof afterward, on the 1st day of July, in the year of our Lord one thousand nine hundred and twenty-eight and on other days between that day and the day of the taking of this inquisition, at the City of Newark aforesaid, the said Alexander G. Edwards, Dale D. Hollanbaugh, Dewi T. Evans, Walter F. Cawthorne and Charles Perry through the agency of the advertising and broadcasting aforesaid, did falsely pretend and represent to divers persons to the Grand Jurors aforesaid unknown that the preferred stock of the Universal Finance Corporation had a real and actual value of fourteen dollars or more per share, whereas, in truth and fact, as the said Alexander G. Edwards, Dale D. Hollanbaugh, Dewi T. Evans, Walter F. Cawthorne and Charles Perry then well knew the preferred stock of the Universal Finance Corporation did not have a real and actual value of fourteen dollars or more per share and by means of such false pretenses did sell to divers persons to the Grand Jurors aforesaid unknown, preferred stock of the Universal Finance Corporation for fourteen dollars or more per share and did obtain therefore money in excess of five thousand dollars.

Return—Indictment.

And the Grand Jurors aforesaid upon their oath do further present that in execution of said conspiracy and agreement and to effect the object thereof afterward, on the twentieth day of July, in the year of our Lord, one thousand nine hundred and twenty-eight, at the City of Newark in the County of Essex aforesaid, the said Alexander G. Edwards, Dale D. Hollanbough, Dewi T. Evans, Walter F. Cawthorne and Charles Perry did falsely pretend to one Joseph Armour that the said preferred stock of the Universal Finance Corporation was then and there of the value of fifteen dollars per share, whereas in truth and fact, the said preferred stock did not then and there have a value of fifteen dollars per share and by color and means of false pretenses, the said Alexander G. Edwards, Dale D. Hollanbough, Dewi T. Evans, Walter F. Cawthorne and Charles Perry obtained from the said Joseph Armour the sum of one hundred and fifty dollars.

And the Grand Jurors aforesaid upon their oath do further present, that in execution of said conspiracy and agreement and to effect the object thereof afterward, on the first day of July, in the year of our Lord one thousand nine hundred and twenty-eight, at the City of Newark, in the County of Essex aforesaid, the said Alexander G. Edwards, Dale D. Hollenbaugh, Dewi T. Evans, Walter F. Cawthorne and Charles Perry did falsely pretend to one Henry Harmeyer that the said preferred stock of the Universal Finance Corporation was then and there of the value of fourteen dollars per share, whereas, in truth and fact, the said preferred stock did not then and there have a value of fourteen dollars per share and by color and means of false pretenses, the said Alexander G.

Return—Plea.

Edwards, Dale D. Hollanbough, Dewi T. Evans, Walter F. Cawthorne and Charles Perry obtained from the said Henry Harmeyer, the sum of one thousand and fifty dollars, contrary to the form of the statute in such case made and provided, and against the peace of this State, the government and dignity of the same.

JOSEPH L. SMITH,
Prosecutor of the Pleas.

On the thirtieth day of March, A. D. nineteen hundred and twenty-nine, on which day the said indictment was presented by the Grand Jury aforesaid, to the said Court of Oyer and Terminer, and the said Justice did then and there order the said indictment to be handed down to the Court of Quarter Sessions, and to be delivered to the Clerk of the Court of Quarter Sessions, in and for said County of Essex, and then and there the said indictment was duly delivered and fully filed by the clerk of said court and an entry of such order and delivery and filing was then and there made in the minutes of said court at the same time pursuant to the statute in such case made and provided.

And afterwards, that is to say, on the 11th day of April, A. D. nineteen hundred and twenty-nine at a Court of Quarter Sessions, holden at Newark in and for the County of Essex, before the Honorable Daniel J. Brennan, presiding Judge of the Court of Common Pleas, Alexander G. Edwards, Dale D. Hollanbough and Dewi T. Evans in the custody of Conrad Deuchler, Sheriff of the County of Essex aforesaid, and the said Alexander G. Edwards, Dale D. Hollanbough and Dewi T. Evans being brought before the Bar

in their own proper persons and forthwith being demanded of and concerning the premises in the above indictment specified and charged upon them, how they would acquit themselves thereof, say that they are not guilty thereof, and therefore for good and evil they put themselves upon the country &c., and Joseph L. Smith, Prosecutor of the Pleas of said State, for said County of Essex, in this behalf doth the like.

Therefore, let a jury thereupon come before the Court of Quarter Sessions to be holden at Newark, in and for the County of Essex, on the 16th day of April, A. D. nineteen hundred and twenty-nine, then next ensuing twelve free and lawful men, each of whom shall be a citizen of this State and resident within the County of Essex aforesaid, above the age of 21 years and under the age of 65 years, by whom the truth of the matter may be better known and who are not of kin to the said Alexander G. Edwards Dale D. Hollanbough and Dewi T. Evans to recognize upon their oath whether the said Alexander G. Edwards, Dale D. Hollanbough and Dewi T. Evans, is guilty of the premises in the said indictment specified or not guilty because the said Joseph L. Smith, Esq., Prosecutor as the said Alexander G. Edwards, Dale D. Hollanbough and Dewi T. Evans, put themselves upon the jury and the same time is given to the parties aforesaid at the same place.

And afterwards, that is to say, the 27th day of April, A. D. nineteen hundred and twenty-nine, to which day the trial of aforesaid indictment was postponed, at the same Court of Quarter Sessions, holden before the Hon. Daniel J. Brennan, Judge of the Court of Common Pleas, comes the said Joseph L. Smith, who prosecutes as

aforesaid, and the said Alexander G. Edwards, Dale D. Hollanbough and Dewi T. Evans, and the jury of whom mention is before made, and by Conrad Deuchler, Sheriff of the County of Essex, for this purpose empanelled and returned after the following challenges by the State 5; 1. John F. Crowe; 2. Philip M. Curran; 3. Alexander Young; 4. Charles S. Carter; 5. Arthur J. Bird; 6. Roy S. Schindel; 7. Robert F. Stoesser; 8. Daniel Guinan; 9. Lawrence Tweedy; 10. Thomas D. Thornycroft; 11. Frederick B. Collins; 12. Wright D. Goss, Jr., being called were sworn upon that jury who to speak the truth of and concerning the premises and thereupon the trial of said issue was commended and continued until the 29th day of May, A. D. nineteen hundred and twenty-nine, when George T. Vickers and Geo. Hobart, Esqs., Counsel for defendants, moved for a direction of verdict which motion was heard by the Court and denied and trial continued until the sixth day of June, A. D. nineteen hundred and twenty-nine, when George T. Vickers, Esq., and George Hobart, Esquire, attorneys for defendants, respectively moved for a direction of verdict of not guilty as to the defendants, Alexander G. Edwards, Dale D. Hollanbough and Dewi T. Evans, which motion was heard by the Court and thereupon denied, when the jury returned into court in charge of the officer sworn to attend them, and then and there in the presence of the Prosecutor, defendants and Court do say upon their oath, "we find the defendants Alexander G. Edwards, Dale D. Hollanbough and Dewi T. Evans, guilty in the manner and form as is set forth in the indictment" and so they say all.

Return—Judgment Record.

By request of George Hobart, Esq., counsel for three defendants, the jury was polled and each juror for himself announced that the verdict as rendered by the foreman was his verdict.

Whereupon all and singular, the premises being seen and by the Court now here fully understood, it is, on this first day of July, A. D. nineteen hundred and twenty-nine, the Court (Hon. Daniel J. Brennan, Judge) do order and adjudge that the above named defendants be imprisoned in the County Penitentiary for a term of one year at hard labor upon this conviction; that they pay the costs of this prosecution and that they stand committed until the said costs be paid. Later the Court do order operation of the service of sentence suspended and said defendants placed on probation by being committed to the care of the Chief Probation Officer of this County for a period of three years upon this conviction, on conditions that the said defendants each pay the Chief Probation Officer a sum equal to a fine of one thousand dollars cash down, costs of court cash down, make restitution as recommended by the Chief Probation Officer and be subject to the rules and regulations of probation and the further order of the Court, and the defendants be in Mercy, etc.

Judgment signed July 1, 1929.

DANIEL J. BRENNAN,
Judge.

Opening for the State.

ESSEX COUNTY COURT OF QUARTER SESSIONS.

Monday, May 27, 1929.

STATE OF NEW JERSEY *vs.* ALEXANDER G. EDWARDS, DALE D. HOLLANBOUGH, DEWI T. EVANS, WALTER F. CAWTHORNE and CHARLES PERRY.	*On Indictment No. 280 for Conspiracy.*

Before Hon. Daniel J. Brennan, Judge, and a jury.

Joseph E. Conlon, Second Assistant Prosecutor of the Pleas, for the State.

George T. Vickers for Dale D. Hollanbough and Dewi T. Evans.

Hobart & Minard (by George S. Hobart) for Alexander G. Edwards, Walter F. Cawthorne and Charles Perry.

A jury is called and sworn.

Mr. Conlon opens to the State, as follows:

Mr. Conlon: If it please the Court, and gentlemen of the jury, you have been empanelled in this case to try an indictment found by the Grand Jury of this County, against five men, Alexander G. Edwards, Dale D. Hollanbough, Dewi T. Evans, Walter F. Cawthorne and Charles Perry. Before I say anything else about this case, I want to read the indictment, and before I read it I want to say, with all due respect, that there is a great deal about it that you may not understand until it

has been explained to you. First of all, I want to read it to you verbatim. (Reads.)

"The Grand Jurors of the State of New Jersey, for the County of Essex, upon their oath, present that on the twenty-fourth day of March, in the year of our Lord one thousand nine hundred and twenty-eight, at the City of Newark, in the County of Essex aforesaid, Alexander G. Edwards, Dale D. Hollanbough and Dewi T. Evans did cause to be incorporated a certain firm under the name of Public Service Finance Corporation for the purpose of engaging in the business of making small loans to borrowers upon personal security; that on the twenty-second day of June, in the year of our Lord, one thousand nine hundred and twenty-eight, at the City of Newark, in the County of Essex aforesaid, the said Alexander G. Edwards, Dale D. Hollanbough and Dewi T. Evans did cause the name of Public Service Finance Corporation to be changed to the Universal Finance Corporation; that on the eleventh day of June, in the year of our Lord one thousand nine hundred and twenty-eight, at the City of Newark, in the County of Essex aforesaid, the said Alexander G. Edwards, Walter F. Cawthorne and Charles Perry did cause to be incorporated a certain firm under the name of Financial Investment Corporation for the purpose of engaging in the business of selling the preferred stock of the Universal Finance Corporation.

And the Grand Jurors aforesaid, upon their oath do further present that on the twenty-eighth day of March, in the year of our Lord, one thousand nine hundred and twenty-eight, at the City of Newark aforesaid, Alexander G. Edwards, Dale D. Hollanbough, Dewi T. Evans, Walter F. Cawthorne and Charles Perry did conspire, con-

federate and agree together to cheat and defraud divers persons to the Grand Jurors aforesaid unknown, by making public sale by means of false pretenses of the preferred stock of the Public Service Finance Corporation, later known as the Universal Finance Corporation, at a price which was fictitious and above the actual and market value thereof.

And the Grand Jurors aforesaid, upon their oath, do further present that in execution of said conspiracy and agreement and to effect the object thereof afterward, on the first day of July, in the year of our Lord, one thousand nine hundred and twenty-eight, at the City of Newark, in the County of Essex aforesaid, the said Dewi T. Evans and Dale D. Hollanbough caused to be paid in dividends to the then holders of preferred stock of the Universal Finance Corporation, the sum of twelve hundred and eight dollars and seventy-five cents, although said amount had not theretofore been earned by said company.

And the Grand Jurors aforesaid, upon their oath do further present, that in further execution of said conspiracy and agreement and to effect the object thereof afterward, on the first day of July, in the year of our Lord, one thousand nine hundred and twenty-eight and on other days between that day and the day of the taking of this inquisition, at the City of Newark, in the County of Essex aforesaid, the said Alexander G. Edwards, Dale D. Hollanbough, Dewi T. Evans, Walter F. Cawthorne and Charles Perry, did disseminate advertising literature to divers persons to the Grand Jurors aforesaid unknown throughout the County of Essex aforesaid, and did cause to be delivered over the radio, addresses advertising the sale of the preferred stock of the Uni-

versal Finance Corporation, wherein it was falsely pretended and represented that the Universal Finance Corporation was under the supervision of the Department of Banking and Insurance of the State of New Jersey, that it was under bond to the State of New Jersey, that the stock thus sought to be sold was preferred stock upon which was payable cumulative dividends at the rate of six per cent, annually, participating in fifty per cent. of the net earnings, and that said preferred stock was paying dividends at the rate of ten per cent, annually, which dividends were being paid out of the earnings of said corporation; whereas in truth and fact, as the said Alexander G. Edwards, Dale D. Hollanbough, Dewi T. Evans, Walter F. Cawthorne and Charles Perry then well knew, the said Universal Finance Corporation was not under the supervision of the Department of Banking and Insurance of the State of New Jersey, and was not under bond to the State of New Jersey and the stock thus sought to be sold was not preferred stock upon which was payable cumulative dividends at the rate of six per cent. annually, participating in fifty per cent. of the net earnings and paying dividends at the rate of ten per cent. annually out of the earnings of said corporation.

And the Grand Jurors aforesaid, upon their oath do further present that in further execution of said conspiracy and agreement and to effect the object thereof afterward, on the first day of July in the year of our Lord, one thousand nine hundred and twenty-eight, and on other days between that day and the day of the taking of this inquisition, at the City of Newark aforesaid, the said Alexander G. Edwards, Dale D. Hollanbough, Dewi T. Evans, Walter F. Cawthorne and

Charles Perry, through the agency of the advertising and broadcasting aforesaid, did falsely pretend and represent to divers persons to the Grand Jurors aforesaid unknown that the prefered stock of the Universal Finance Corporation had a real and actual value of fourteen dollars or more per share, whereas, in truth and fact, as the said Alexander G. Edwards, Dale D. Hollanbough, Dewi T. Evans, Walter F. Cawthorne and Charles Perry then well knew, the preferred stock of the Universal Finance Corporation did not have a real and actual value of fourteen dollars or more per share, and by means of such false pretenses did sell to divers persons to the Grand Jurors aforesaid unknown, preferred stock of the Universal Finance Corporation for fourteen dollars or more per share and did obtain therefor money in excess of five thousand dollars.

And the Grand Jurors aforesaid upon their oath do further present that in execution of said conspiracy and agreement and to effect the object thereof afterward, on the twentieth day of July, in the year of our Lord, one thousand nine hundred and twenty eight, at the City of Newark, in the County of Essex aforesaid, and said Alexander G. Edwards, Dale D. Hollanbough, Dewi T. Evans, Walter F. Cawthorne and Charles Perry did falsely pretend to one Joseph Armour that the said preferred stock of the Universal Finance Corporation was then and there of the value of fifteen dollars per share, whereas, in truth and fact, the said preferred stock did not then and there have a value of fifteen dollars per share and by color and means of false pretenses, the said Alexander G. Edwards, Dale D. Hollanbough, Dewi T. Evans, Walter F. Cawthorne and Charles Perry obtained from the said Joseph Armour the sum of one hundred and fifty dollars.

And the Grand Jurors aforesaid, upon their oath do further present, that in execution of said conspiracy and agreement and to effect the object thereof afterward, on the first day of July, in the year of our Lord, one thousand nine hundred and twenty-eight, at the City of Newark, in the County of Essex aforesaid, the said Alexander G. Edwards, Dale D. Hollanbough, Dewi T. Evans, Walter F. Cawthorne and Charles Perry did falsely pretend to one Henry Harmeyer that the said preferred stock of the Universal Finance Corporation was then and there of the value of fourteen dollars per share, whereas, in truth and fact, the said preferred stock did not then and there have a value of fourteen dollars per share and by color and means of false pretenses, the said Alexander G. Edwards, Dale D. Hollanbough, Dewi T. Evans, Walter F. Cawthorne and Charles Perry obtained from the said Henry Harmeyer, the sum of one thousand and fifty dollars, contrary to the form of the statute in such case made and provided, and against the peace of this State, the government and dignity of the same."

Gentlemen, that is an indictment for conspiracy to defraud. You are going to take this indictment with you into the jury room, when you consider this case, and you will then notice that the first paragraph is introductory; it sets forth that these men formed two companies, one, the Universal Finance Company and the other the Financial Investment, the second company to sell the stock of the first. In the second paragraph, gentlemen, it charges the crime of conspiracy; that on March 28, 1929, in the City of Newark, they did conspire, confederate and agree together to defraud certain persons to the Grand Jurors

unknown. In the subsequent paragraphs, gentlemen, are set forth what we call overt acts; in other words, they are the specific acts which all of these defendants, or some of them, did, in furtherance of this conspiracy.

So, when you boil this indictment down, you will find that it is the same as the evidence in this case is going to be; it is not so complicated as it sounds. It charges that they cheated and defrauded persons unknown, and then it relates the specific acts they did. Some of the acts may be legal and some illegal, but they all tend to carry out this conspiracy to defraud.

To put this in language that you will all understand, this was a conspiracy to promote a stock and get money from the proceeds of the sale of this stock. By conspiracy we do not mean that these men met in a dark cellar, or some such place, or that this thing had to be done by direct agreement. Their minds all met, they all came together on this enterprise, which they perpetrated and were successful in.

It is possible that this case is going to seem complicated, I don't know; but when I outline the facts, as I am going to do, and as I remember them, I think you will find that there is one distinct issue for you to decide, and that is, did these defendants do these certain things I am going to tell you about. If they did do them, they are guilty; if they did not, they are not guilty. But it is going to come down to one specific thing.

Now, what happened is this: I am reciting these facts from my memory, as I intend to prove them. If I make any mistakes, it is not intentional.

Opening for the State.

Alexander G. Edwards had had some experience in the small loan business, and later, promoting stock in a small loan business. The small loan business is carried on under a statute of this state called the Egan Act, passed in 1914, which authorizes a corporation to make small loans, not in excess of $300; they cannot, under the law, loan more than $300 to any one person. Loans are made on notes usually secured by either the endorsement of some responsible party, or on a chattel mortgage on furniture. Under the law as it was at that time, these corporations were authorized to charge interest at the rate of three per cent. a month on these loans; that was legal; the loans not to amount to more than $300.

Edwards had had some experience, as we will prove, in selling some stock in another company. At some time prior to March 24th, he got the idea of starting a company of his own, and after due deliberation, he chipped in $1,250. That was the start of this thing. There is some testimony, I believe, wherein, on subsequent dates, he may have chipped in $1,000 more; but my recollection is his total investment in this whole proposition was an investment of $1,250. That Alexander G. Edwards put into this company and he then goes on and forms his corporation. I will have to ask you to remember these names. I think there were two others who were dummies, but he acted together with Dale Hollanbough, Dewi T. Evans. Hollanbough was a radio broadcaster. That was his business. Evans was in the employ of the Attorney-General of New Jersey, working under Richard Plumer, a lawyer, in Newark. Plumer was employed to investigate corporations who were engaged in publicly selling their stock. Evans got Hollanbough in and also put in $1,250.

New Jersey State Library

On March 24th, they started off this thing by the incorporation of the "Public Service Finance Corporation."

Before I go any further, I want to explain the change of names, which will be proven. There happened to be another concern around this County calling themselves the Public Service Corporation. When this Public Service Finance Corporation started in business they very strenuously objected; in fact, they applied to the Court of Chancery to enjoin this outfit from using the name Public Service Finance, in connection with this business, and in the month of June, there was a decree entered against them, in the Court of Chancery, enjoining them from using the name "Public Service." They then, after that decree was entered, changed the name to the "Universal Finance Corporation." So when you hear "Public Service Finance Corporation," it is the same concern as the "Universal Finance Corporation."

It was $1,250, gentlemen, that formed this company, and it was quite a company. They had two kinds of stock, preferred stock and common stock. Of the common stock they had 5,000 shares, of no par value; of the preferred stock they had 25,000 shares, with a par value of $10. There were actually issued 5,000 shares of common stock of the Public Service Finance Corporation, and there was $1,250 paid for those shares. That was all paid by Edwards. Edwards was in control, but he didn't take any stock. He just put in his money. He didn't have anything in his own name. He apparently made presents, or something of the kind, some to his wife, his mother and his brother. It just happened, when the total presents to his family were made up, they held 2,607 shares, a little bit more than half,

so that he had absolute and positive control of the corporation, and every bit of the business that it did, and he put in $1,250. Evans had some stock and Hollanbough had some stock, but they didn't pay for it. I think it was Hollanbough that put in his note for $1,000. There were some other stockholders who passed out of the picture, with whom we have nothing to do for the present.

The common stockholders only could vote unless there be a default in the dividends for a year; so that Edwards had complete control of the company, with Hollanbough and Evans. They issued 25,000 shares of preferred stock. Apparently after sitting down and thinking it all over, they decided it was worth $10 par value. They had $1,250. They must have spent some of that for lawyer's fees and their equipment. Nevertheless, they decided that this stock was going to be worth $10 par. They also decided, "Well, we have got to have a surplus in the company; we are going to do a loan business," and they decided to sell it to the public at $14 a share. When they so decided, they did not have a single dollar's worth of assets; no good will; no experience to amount to anything in the conduct of a business of this kind; but they had a lot of certificates printed, of six per cent. cumulative preferred stock. First, six per cent. profit was to go to the preferred stockholders; after this six per cent. was paid, the balance of the profit was to be divided equally between the preferred and common stockholders.

Then they got a lot of stock certificates printed, they get set; and away they go.

They made a contract with Edwards. Edwards' pay was by way of commission. He put in $1,250,

in the original company, but he had nothing to do with that, he had given away the stock to his family. But the Universal makes a contract with him. They pass a resolution fixing the arrangements between the Universal Finance Company and Edwards, to give him the full option to sell the stock of the Universal Finance Corporation. He was to receive twenty-five per cent. of the stock subscriptions, and he was to receive that out of the first moneys that were to be paid in. Of any monies that were paid, in installments, the first $25 out of every hundred went to Edwards as his commission.

About the time that the Public Service Corporation forced this change of name, for some reason or other, Edwards incorporated his selling agency, and he called that the Financial Investment Company. That was only a tiny company with a thousand dollars worth of stock; one or two shares in his name and the others in the name of but they were only dummies. That, was Edwards' company with $1,000 paid up stock; that is what they started in with; that was, in a general way, Edwards' company. That is devoted to the sale of the stock of the Universal Finance Corporation.

When the Universal Finance Corporation started they didn't have any assets; they didn't have any training, ability or good will.

Now, they sold some stock. They started some business in there, in April, and Edwards sold some stock. When you see him on the stand you will make up your mind whether he is a stock salesman.

Opening for the State.

I am going to skip, now, to the 30th of June. A few days before the 30th of June, the Board of Directors of this company got together, and according to their books, they had what is apparently a serious discussion. Apparently they decided that "business is so good we are going to award a dividend to our preferred stockholders, of six per cent., and further, four per cent. per annum, making a total dividend at the rate of ten per cent. per annum. So that the preferred stockholders, at that time, as of June 30th, received one-quarter of the annual dividend, of ten per cent.—two and a half per cent. That was fine. They paid that dividend. They paid out $1,208 and some cents. Their interest on their small loans, up to that time had been $41.53, and on June 30th, they paid out a dividend of $1,208. Their income amounted to about $160, total income, up to June 30th—say $200—and they paid out a dividend of $1,208. Did they do that because they liked their stockholders or did they do it for another purpose. You can decide that when you hear this case.

They got out literature, literature and advertising letters, and they made agreements with broadcasting stations. Most of their broadcasting was done over W. A. B. C. Most of you gentlemen are familiar with that station; a very good station. What did they represent to the public? They represented to the public such things as this—this is going to be testified to, in time: "Broadcasting security offerings"—that is, broadcasting over the radio—"is permitted only after a very thorough investigation." They knew that that was a lie, particularly in this case, because they had misinformed and cheated the broadcasting station that they were broadcasting over, as I will show you; they represented to the

public, that the business was under the supervision of the Department of Banking and Insurance of the State of New Jersey. They knew if that statement was not a lie, it was at least misleading, because the only supervision the department of banking and insurance was required to perform was insofar as it protected the borrowers on these small loans.

Mr. Vickers: I dislike to interupt the Prosecutor, but I think I ought to object to his stating the law. I think he is wrong, in this matter, and I take it your Honor will charge the jury as to what the law is.

The Court: I think it may be well to set forth what the legal implications may be in a situation of this kind.

Mr. Conlon: Gentlemen, you understand when I mention the facts in this case it is subject to my recollection of what the witnesses will say, and when I state what I think are the principles of law to you, in this case, it is subject to what the Court may say. He will state the law. But they say that this is subject to the supervision of the Department of Banking and Insurance of the State of New Jersey, and I submit that the impression given out by that, was that this business had the same supervision as a bank, which was not true, and in that respect they lied to the public. And here is an important thing: "Now, paying dividends at ten per cent. per annum; this is to be increased to twelve per cent. on January 1, 1929; all out of earnings, and still adding to surplus account—" and they never made a nickel; and they cheated the public and defrauded them when they made that representation. And they say this: "The treasurer of the corporation, Mr. Dewi T. Evans, State Ex-

aminer, Division of Securities, Attorney General's office, of the State of New Jersey!" That statement is true. Mr. Evans was all of those things, he was an examiner in the Attorney General's office, but I say that the implication there is that his presence as treasurer of this company was a protection to the stockholders, and that they knew at this time that his presence was a menace and a danger to the stockholders, because he helped more than anybody else to cheat and defraud the public. "All detail work is in the hands of Haskins & Sells, one of the leading firms of certified public accountants of the United States." All that is true, but that accountant had about as much to do with their affairs of this company as you did. They were bookkeepers and their name was no protection to the public, as represented in this paper. "Finally," they say, "The increase in dividend rate will naturally cause a sharp increase in the price of these shares"—and they knew that there should be no increase in dividends; they knew that there was no money being made.

Under the agreement with Alexander Edwards, there were four different contracts made. The first contract authorized Edwards to sell 25,000 shares at $14; but there was this clause in the contract, which was very important; that that price could be changed only with the consent of both. In other words, the Universal Finance Corporation could not change the price of their own stock without Edwards' consent; and he sold 25,000 shares at $14. Then they told the public, "The price is going to go up; you had better get in at $14," and the public got in at $14, then they raised the price to $15, and sold 15,000 shares at $15; then they put the price up

to $16, and they said, "Business is so wonderful"—and then they issued 20,000 shares more at $15 and then—at any rate, they issued 75,000 shares at $14, $15 and $16 and every one of these prices was a fictitious price, that they themselves knew had no reference to the money they were making, or anything else, but solely for the purpose of selling the stock.

Now, I may not make this thing sound very clear to you, but it was a very, very clever thing. They started business on the first of April, and before the end of the year of 1928, they had sold very nearly 50,000 shares of stock; and they had sold it for cash to the public; not to men on Broad street, who knew what was going on and who dealt in bank stocks and investments, but to people who listened to what was coming in on the radio and who sent in telegrams and letters. That is where they made their money; and by the end of eight months they got $378,000 worth of the public's money, and there was coming to them $215,000 in installments, which means that they had sold stock in excess of $600,000 in eight months. Incidentally, in that time, our friend Mr. Edwards, who was so magnanimous to his family as to give his stock to the family, not keeping a share, had been paid $178,000 in commissions.

It cost them something to make these sales. According to the books, something in the neighborhood of $120,000, leaving him a profit of about $60,000, after all expenses and everything else was paid. He himself received, or his family during that period, in cash, $38,000. Hollenbaugh received in cash, during that period, very nearly $11,000; Evans, the man from the At-

torney General's office who was probably responsible more than anybody else for the success of this thing, like most real workers, only got $3,200.

Now, there is going to be presented to you gentlemen the literature that these people disseminated; there is going to be presented to you the stenographic copies of the talks that were given over the radio. What the State is going to prove is this; that they made misrepresentations of facts in furtherance of this conspiracy; and not only the facts set forth in the indictment, but others too, because, under the law, we can prove other facts that are not alleged in the indictment.

The first thing they did was to create an atmosphere—you will get this from the testimony —create the impression among the public that this thing was a bank. We have the word here "Industrial Banking." They are just two words that are fitted together. There is no such thing as "Industrial Banking;" this was a small loan company.

If you look at the literature you will find that they very cleverly compared this stock to bank stock. They used the words "Industrial banking" until they were stopped from using it, and then they did not use it any more.

But the main point in the case, gentlemen, is this: They represented to the public—that is the main representation—and this is the thing that I want you to keep in mind—they represented to the public over and over again that this stock was paying a dividend at the rate of ten per cent. and that besides paying this dividend it was creating more surplus, and that on

the first of January, 1929, they would increase the dividend to twelve per cent.; and they represented to the public that these dividends were being paid out of earnings. That was a lie. These dividends were not paid out of earnings.

You are going to have this situation; you understand the par value of this stock was $10 and they got $14; and out of every $14 this fellow Edwards put $3.50 in his pocket, so that the company got $10.50, of which amount fifty cents was surplus. That was not the earnings of the company. In the beginning that is claimed that that was a surplus. If you find that they did represent to the public that this stock was paying ten per cent. out of earnings, and if you find it was not paying ten per cent. out of earnings, they are guilty.

I am going to show you that on June 30th, they paid a dividend to the amount of $1,208, and that they lost money, that there was an actual loss at the time of $806, besides a large loss in the depreciation of stock investments. On September 30th, they paid $ and had borrowed seventeen hundred dollars besides which a loss for depreciation. That is the gist of the case.

There are two other things I want to tell you. You immediately ask, what did these fellows do with all of this money, $400,000 or $500,000 or $600,000? Of course, that was the sole question. They could not possibly absorb it; they could not put out their money in small loans as fast as these people who wanted to buy the stock paid for it. Of course, the cash accumulated. When they paid the first dividend they had $10,000 on loan and when they closed up—

that is, when our complaint starts, they had about $100,000 out on loans. What did they do with the rest of it? They knew, as you will see from the proof, that there was no profit in this small loan business, such as they were promising they were making, to the public. So they went in and played the market and ran what they called an "Investment Trust." They may have done it wisely; I don't know. I believe they dealt through the National City Company and the Broad and Market Bank. Nevertheless, the bulk of the money they had in their hands was not devoted to the small loan business; they were playing the market with it.

At that time they were giving out in the radio talks—they were saying, "We are putting an issue of stock on the market because the demand for small loans is so great," and when they got that money they would go out and buy stock in Wall street, and not devote it to small loans. All of this time Edwards was getting twenty-five per cent. on every share of stock that came in; he was doing very well.

One other feature of the case is very important. When they went over to Station W. A. B. C. Mr. Clark, the manager over there, questioned them, as he rightfully should, concerning coming in and broadcasting the sale of stock over the radio. That broadcasting was done under the name of the Financial Investment Company, and they made such statements as this: "The Financial Investment Company has always specialized in high grade loan securities." That is the way they start these speeches over the radio—"The Financial Investment Company has always specialized in high grade industrial securities," and the Financial Investment never sold a

security in its life. At any rate, the manager of this concern questioned these gentlemen as to whether or not it was legal for him to allow this to go over his station. He talked with Hollenbaugh and they talked to Edwards and Clark. During all this time Evans, the treasurer of the company, was an employee of Plumer, and as an employee of the Attorney General's office Evans goes back and steals two sheets of Mr. Plumer's stationery, which is headed, "Office of the Attorney General of the State of New Jersey." I say he stole these two sheets, because he did. He wrote the correspondence; that was his duty, in the course of his duty as examiner there, with his own name or somebody else's name, and that was in the course of his official business. But this letter I speak of was not in the course of his official business, and therefore I say he stole these two sheets of paper. He wrote a letter—Evans wrote a letter, to Hollenbaugh, not to Clark, of the radio corporation. Clark did not know who Evans was; but Evans sits down and writes a letter to Hollenbaugh, the president of his corporation, on the letterhead of the Attorney General's office of the State of New Jersey, and he says: "In response to your inquiry and from my previous experience" * * * (reads) "Go ahead and broadcast," and he signs his name, Dewi T. Evans, Examiner of the Attorney General's office, and Hollenbaugh goes over and gives it to Clark, and he says, "All right, go ahead and broadcast." Gentlemen, that was cheating; that was fraud; and if this was an honest business, it would not have been done.

Now, we come down to this proposition. These people organized in order to do a small loan busi-

ness, and sold the stock, and the most important thing to them was to make this twenty-five per cent. commission, and when they come to sell the stock, they have nothing to sell but a lot of stock certificates. So, what do they do? They decide to lie and cheat and defraud the public, and do defraud the public, and I will prove, gentlemen, that after all of these representations by them were made, that if this company were liquidated at the time the complaint in this case was made, without allowing a cent for expenses, after liquidation they would not have paid fifty cents on the dollar, and at that time they were telling the public that they had a surplus, and increasing profits, and so on and so forth.

Gentlemen, that is the picture, and if what I have said is true, I think the Court will charge you that these men are guilty of conspiracy. I am going to try and prove this case, now, in a manner that will make it simple to you, so that you can always keep in mind what the issue is, in plain language. I do not mean I want to keep out any defense that these men are entitled to, but I do ask that the issue be presented to you without throwing a lot of books before you and saying, "Here it is," statements and books that you could not understand and I couldn't understand. I am going to try and prove the case by probably the best evidence that could be obtained—and that is by the testimony of these men themselves. They have admitted practically everything I said, almost everything I have said—

Mr. Vickers: If your Honor please, that is a summation. I do not think counsel ought to sum the case up.

The Court: How is it a summation? He says that he expects to prove this by their own admission.

Mr. Vickers: That statement in itself would be improper, until your Honor has an opportunity to pass on the testimony.

The Court: Limit yourself to the questions you expect to prove.

Mr. Conlon: These defendants have made statements of their connection with this company. Most of their connections are matters of record, such as their stock holdings, and their salary, and the amount of commissions that were given, radio speeches and literature. We have got that all in black and white. Each one of these defendants has made a statement as to his part.

In order to simplify the presentation of this case to you, I am going to prove the State's case at this trial by the admissions of the defendants or rather the statements that they have made to responsible or reputable people.

You will realize this, gentlemen, that conspiracy is an agreement which is carried out by a certain number of acts, one or more. Now, some of those acts may be perfectly legal; in fact, they generally are. For instance, in the formation of the company they had McCarter & English do it for them and the company is organized perfectly; there is no question about that; but the motive behind it is the question, and this series of acts will be proved, some of them legal and some of them illegal, and when I am through, I am going to ask you to bring in a verdict of guilty from the evidence that I have turned over to you.

CLARENCE W. MERRILL, sworn on behalf of the State.

Direct examination by Mr. Conlon.

Q You are a detective, attached to the Prosecutor's office? A I am.

Q Did you, under the instructions of Lieutenant Hargan, of the Prosecutor's office, seize some papers? A I did.

Q Where? A Broad and Market.

Q What is the name of the concern? A The Universal Finance Corporation.

Q Where are they? A Located on the third floor of the building on the southwest corner of Broad and Market streets.

Q When you were in there did you seize any papers? A Yes, sir; we took some papers.

Q What did you do with them? A Turned them over to Lieutenant Hargan.

Cross examination by Mr. Vickers.

Q You say that, at the instance of Lieutenant Hargan of the Prosecutor's office, you made this seizure? A Yes, sir.

Q What papers did you have with you to authorize that?

Mr. Conlon: I object.

The Court: Objection overruled.

A I believe Detective Dimond had a warrant.

Q You didn't have anything? A No, sir; I did not.

Q You had nothing? A No, sir.

Q What is the name of the detective, you say?

The Court: Dimond.

WILLIAM J. CALLAHAN, sworn on behalf of the State.

Direct examination by Mr. Conlon.

Q You are a detective in the Prosecutor's office? A I am.

Q On December 27th last, did you, under the instructions of Lieutenant Hargan, go to an office on Broad street? A Yes.

Q Where? A In the Griffith Building.

Q Where? A Seventh floor, I think.

Q Do you know what concern it was? A The Industrial Finance Corporation.

Q Did you seize some papers? A Yes, sir; seized all the records that were in the office.

Q What did you do with them? A Turned them over to Lieutenant Hargan.

Cross examination by Mr. Hobart.

Q Did you have a paper, authorizing you to seize the papers? A Had a warrant to arrest everybody in the office.

Q Did you have a search warrant? A Yes, sir.

Q Where is it? A With the other records in the case.

Q In the Prosecutor's office? A Yes, sir.

Q Do you recall who swore out the warrant? A Lieutenant Hargan, I am most sure.

Re-direct examination by Mr. Conlon.

Q You say you did have a warrant for the warrant arrest of the people in the office? A Yes.

Q That was a "John Doe" warrant? A A "John Doe" warrant.

ALFRED J. HARGAN, sworn on behalf of the State.

Direct examination by Mr. Conlon.

Q You are a lieutenant of detectives in the Prosecutor's office. A I am.

Q Was it under you instructions that Detectives Merrill and Callahan seized the papers on December 27th last? A Yes, it was.

Q By virtue of what authority did you do so? A On a complaint sworn out by me and a warrant issued by a justice of the peace.

Q When they came back did they turn any papers over to you? A They did.

Q I show you a pamphlet and ask you if you have seen that before? A I have.

Q Where did it come from? A Came from the office of the Universal Finance Company.

Mr. Conlon: I offer it in evidence.

Mr. Hobart: I object on the ground that the mere fact that papers are in the possession of the Prosecutor does not make them evidential.

The Court: (After argument.): Objection overruled.

Defendants' counsel prays an exception to this ruling of the Court.

Exception allowed; let it be sealed; and it is signed and sealed accordingly.

DANIEL J. BRENNAN,
Judge.

Q I show you another pamphlet and ask you if you have seen that before? A That came from the office of the Universal Finance Corporation, and was turned over to me.

Mr. Conlon: I offer it.

Mr. Hobart: I make the same objection.

The Court: The same ruling.

(Two papers marked Exhibit S. 1 and Exhibit S. 2.)

The Court: You may have an exception to this line of testimony.

Exception signed and sealed accordingly.

DANIEL J. BRENNAN,
Judge.

Q I show you another pamphlet and ask you if you have seen that before? A Yes, I have. Q Where did it come from? A From the office of the Financial Investment Corporation.

Mr. Conlon: I offer it in evidence.

(Marked Exhibit S. 3.)

Mr. Hobart: I make the same objection, and at the same time I wish it to be understood that I make the same objection to each one.

The Court: An objection may be entered to this whole series of pamphlets, for whatever force it may have, and counsel may have an exception noted on the record, and it may be understood that that applies to all the defendants.

Exception signed and sealed accordingly.

DANIEL J. BRENNAN,
Judge.

Mr. Hobart: May we also have it understood that an objection made by either counsel for the defendants applies to all the defendants?

The Court: Yes.

Q I show you what purports to be a copy of a form letter, and ask you if you have seen that before? A I did.

Q Where did it come from? A The Financial Investment Corporation.

Mr. Conlon: I offer it in evidence.

The Court: It may be admitted and marked, subject to the Court's prior ruling.

(Marked Exhibit S. 4.)

Q I show you a pamphlet entitled "The Treasure Chest of Modern Finance," and ask you if you saw that before? A Yes, sir.

Q Where did it come from A Came out of the Universal file, not from the Financial, from the Universal.

Mr. Conlon: I offer it in evidence.

(Marked Exhibit S. 5.)

Mr. Hobart: No questions.

(Cross examination waived.)

RICHARD C. PLUMER, sworn in behalf of the State:

Direct examination by Mr. Conlon.

Q You are an attorney at law, Mr. Plumer? A Yes.

Q What is your official position? A Assistant Attorney General, assigned to carry out the provisions of what is known as the New Jersey Securities Act.

Q Your office is located where? A 1060 Broad street, Newark.

Q Where were you located last December? A 24 Commerce street, Newark, New Jersey.

Q I show you a book with some pages inserted and ask you if you ever saw that before? A Yes, I did.

Q Where and when? A On or about December 20, 1929, at my office, 24 Commerce street, Newark, New Jersey—I beg your pardon, 1928 instead of 1929.

Q Who was present? A At that particular time there were four. I don't know who was actually in the room at the time that this book was handed to me, but my recollection is that Mr. Perry, one of the men named in the indictment, handed it to me, when I was examining him with respect to the affairs of the Financial Investment and Universal Finance Company, and it was put in evidence by me in the examination that I was making at that time.

Q Did you have any conversation with Perry or any other defendants in this case with reference to it? A I did. They were there then, in compliance to a subpoena that had been issued by me and testimony was taken.

Q Who was there? A There appeared on that day Mr. Perry, Mr. Cawthorne, Mr. Evans.

Q Have you ever seen Mr. Hollenbaugh? A Not that I can recollect, no.

Q Do you see Mr. Evans in court? A Yes.

Q Point him out, please. A That is the last man in the first row to my right (indicating.)

Mr. Conlon: Is it admitted that the witness has indicated Mr. Evans?

Mr. Vickers: Yes.

Q Do you see Mr. Edwards in court? A Whether I could recognize Mr. Edwards I don't know, if I saw him.

Mr. Conlon: Have you any objection—

Mr. Vickers: It is admitted that this defendant, Mr. Edwards was there.

Mr. Conlon: And is the identification of the other defendants admitted?

Mr. Vickers: Right.

The Court It is admitted that the four defendants, the presence of whom was testified to by Mr. Plumer, were four of the instant defendants.

Q Did one or more of them speak to you about this book, Mr. Plumer? A There have been so many examinations since that time it is a little bit difficult for me to recollect, but all of this was taken down stenographically and appears as a matter of record. My recollection is that this was handed to me by Mr. Perry as being the radio talks that were used.

Mr. Vickers: I object to the conclusion of the witness. What was said I do not object to, but his conclusion.

Q What did Perry say about this, Mr. Plumer? A He handed me a book and said as I recollect it "These are the radio talks that have been used in connection with Universal Finance Corporation or the Finance Investment Company."

Q Did you talk about this book to any others besides Perry? Did you speak to Evans about it? A Yes.

Q What did he say about it? A He said that these were the regular talks used.

Richard C. Plumer, cross.

Q Did you say that Cawthorne was there? A Yes, Cawthorne was there.

Q Who else was there? Edwards was there? A Yes, Edwards was there.

The Court: Edwards, Evans, Cawthorne and Perry have been testified to.

Q They were all there, then, except Hollenbaugh? A Yes.

Q Did you speak to Edwards about the book in the course of your examination? A My recollection is that I did.

Q What did he say about it? A He said that it was the radio talks that had been used by the Universal and by the Financial Investment in connection with the sale of the stock of the Financial Investment Corporation, or whatever they called it.

Mr. Conlon: I offer the book in evidence.

The Court: Is there any objection?

Mr. Vickers: No.

Marked Exhibit S. 6.

Cross examination by Mr. Hobart.

Q Mr. Plumer, I observe on the first page of the State's Exhibit 6 what looks like an identifying mark—"D-2-12-20 28." Was that put on by you or your stenographer? A My recollection is that was put on there by Mr.—I forget the name of the stenographer who took the testimony, but he came from the office of Mr. Heironimus, his stenographer.

Q These gentlemen who were being examined by you were there, I believe you said, in obeyance

to a subpoena from the Assistant Attorney General's office? A Yes; a subpoena had been issued to the Financial Investment to appear by certain officers.

Q Have you that subpoena? A Yes.

Q Will you produce it, please?

Mr. Conlon: I object.

The Court: Objection overruled.

(Witness hands paper to Mr. Hobart.)

Q Is this the subpoena you refer to? A This is the subpoena.

Mr. Hobart: May I have it marked for identification?

Marked D. 1 for identification.

Q Is there anything on these radio talks, Mr. Plumer, that serves to identify them by reference to a date, as to when they were given? A Not that I know of. No. There was some discussion of it at the time they were handed to me. I asked them the direct question as to when they had started to broadcast and they said about the time of the incorporation. I then asked them a question whether these were all the radio talks and they replied, as I recollect it, saying that they were.

Q Now, I observe that at the bottom of the lower right hand corner of these radio talks there appear to be numbers, beginning with number 1 and running consecutively. You remember putting these numbers on the various papers? A I do.

Q Were they intended to indicate in any way the order in which these talks were said to have

been given? I mean, in regard to the date. For example, pages 1 and 2, are those supposed to be first, and the next pages the second, 1 and so on? A No, they were not. That is the way the pages were handed to me, and I put these numbers on there simply for my own convenience and to identify them.

Q Then these numbers have no significance at all so far as indicating the order in which the talks were given in respect to dates? A No.

Q You cannot tell then, by reference to this Exhibit S. 6, which was given first and which talk was given second, which last, and so on? A No, I cannot.

Cross examination by Mr. Vickers:

Q Is it your recollection that Mr. Evans was there under any subpoena issued by you, at the time you refer to? A He came in. Whether he came in in response to a subpoena I cannot recollect because I don't know whether he was an officer of that particular company or not.

Q You say you don't know whether he was an officer or not? A I cannot recollect.

Q You mean to say that you are interrogating a man concerning a transaction without knowing whether or not he was connected with the transaction? A No, I do not say that. I say I can not recollect what office if any he had in the Financial Investment Company at that time.

Q You know, as a matter of fact, don't you, that he didn't have any whatever, isn't that right? A I cannot recollect what his connection with it was.

Q You do know that he came there voluntarily, don't you, and that no subpoena had been

served on him, and none was intended for him by this paper which is marked D. 1 for identification?

Mr. Conlon: I object to that as not cross examination and not material.

The Court: How is this material?

Mr. Conlon: I will withdraw my objection.

Q (Question read.) A He made no objection to testifying—

Mr. Vickers: I ask that that answer be stricken out as not responsive and that the witness be directed to answer the question.

The Court: Strike it out.

Q (Question read.) A He was there, and so far as I know he was there voluntarily. If he was not an officer of the Financial Investment Corporation, to whom that subpoena was directed, he must have come in without a subpoena.

LAWRENCE SQUIRE, sworn in behalf of the State.

Direct examination by Mr. Conlon.

Q Mr. Squire, you are one of the official stenographers in the Court House? A Yes, sir.

Q I show you some transcripts of testimony and ask you if you know who prepared them? A Why, I prepared Mr. Edwards' testimony, and Mr. Cawthorne's, and part of Mr. Perry's.

Q When you say you prepared it, what do you mean? A I mean that I took it in shorthand, in the Prosecutor's office.

Q When? A On the dates here, December 27, 1928, from the lips of the witnesses, verbatim, and transcribed it into typewriting, and delivered it to you.

Q And the testimony that you took was given in whose presence? Who was there when you took it? A As I remember, Mr. Fisch was there and myself.

Q Was Mr. Fisch there all the time, did you say? A I couldn't say he was there all the time.

Q Do you remember whether I was there all the time? A I don't think you were there all the time; you were in and out.

Q But you took all of the testimony, you say? A I took all but Mr. Perry's. I took about eleven pages. At that time we were running it relay and I think Mr. Wichmann, Judge Duncan's stenographer, took the latter part of Mr. Perry's testimony, and I took the other two.

Q Have you the shorthand notes?

Mr. Vickers: There is no question raised on the accuracy of the transcript at all.

Mr. Conlon: I propose now, your Honor, for the purpose of getting certain statements on the record to ask this witness, verbatim, serially, "Was this question asked and was this the answer given."

The Court: Is there any denial of the fact that the transcript is an accurate transcript of the witness' testimony?

Mr. Vickers: There is no point raised that the reproduction is not accurate. The competency of it is another thing.

Mr. Conlon: The suggestion I was about to make is this: I do not think that the testimony, going in as an exhibit, is going to do the jury any good. I do not think it is necessary to read all of the testimony. My suggestion is that I be allowed to read such parts of it as I consider relevant.

The Court: All right; get it into evidence first.

Mr. Vickers: Of course that will be objected to when the formal offer is made.

(After further argument.) At this time, I say it is not competent.

The Court: Once you have this marked in evidence you can make what use of it you see fit.

Mr. Conlon: I offer it.

Mr. Vickers: It is objected to, now, as the record stands.

The Court: Objection overruled.

Mr. Vickers: Perhaps I ought to enlarge upon and specify what the grounds of the objection are. It is objected to on the ground that there is nothing here to show that the statement, whether favorable or unfavorable, to the defendants was made in such a way as to make it competent—there is nothing before the Court to show whether it is competent at this time.

The Court: (After argument): If there is any suggestion that they were not voluntary statements, he may be examined on that point. I am going to assume that that is a fact, unless the contrary is shown. If there is any such suggestion, you may examine on that point.

Mr. Vickers: May we have the privilege of cross examining before, then?

The Court: You may.

Cross examination by Mr. Vickers.

Q Mr. Squire, you say this testimony was taken in the office of the Prosecutor of the Pleas? A Right.

Q The persons examined—were they under arrest? A That was not within my knowledge at the time.

Q Were all of the persons present, who were examined, present at one time, or one present at a time, in the presence of yourself and the two Assistant Prosecutors? A One present at a time.

Q Were the persons examined represented by counsel, present? A I don't know anything about counsel being present.

Q You have named the persons who were present? A (No response.)

Q There are no appearances of counsel in the record are there? A No; these are voluntary statements, the questions were asked that way—

By Mr. Vickers.

Q You say they were voluntary? A Yes. I have here a question, in Mr. Perry's testimony: "Have you any objection to"—

Q Did you take that from Mr. Perry's testimony? A That part.

Q Read that. A The question is, "Have you any objection to making a voluntary statement in this matter? A No."

Mr. Vickers: There is no objection.

The Court: The objection is withdrawn.

Mr. Conlon: Then I offer the three transcripts in evidence.

The Court: I assume that the fact that Judge Duncan's stenographer took part of the testimony is not objectionable to you?

Mr. Vickers: No.

Mr. Conlon: I offer the testimony of Alexander G. Edwards, Walter F. Cawthorne and Charles Perry.

(Three books of testimony marked Exhibit S. 7, Exhibit S. 8 and Exhibit S. 9.)

Mr. Vickers: No cross examination.

Mr. Hobart: No cross examination.

Mr. Conlon: I do not want to step out from the orderly process in this case. It is a rather difficult case anyway, to follow. I want at this time to follow out my suggestion of reading parts of the testimony. May I suggest that we adjourn now, and I will mark it during the lunch hour.

Mr. Vickers: Of course it ought to be understood that the entire testimony is in evidence, and if counsel desires certain parts or it I do not think I have the right to make any objection to it.

(At this point the Court takes a recess from one until two p. m.)

After Recess.

Mr. Conlon: If your Honor please, I propose now to read to the jury such portions as are now in evidence that I think are material to the issue, and I will make this suggestion, that if

Reading Exhibit S. 4.

there are any parts that Colonel Vickers wants me to read for the purpose of clearness I will be glad to read them.

The Court: I will let the suggestion come from him.

Mr. Conlon: I will not read any of Exhibits 1, 2, 3 or 5, but I will read from Exhibit 4.

"I asked our Mr. Perry this morning, if he had received a subscription from you and he tells me he has not. WHAT HAS HAPPENED? Surely your inquiry was promoted by a desire to invest.

"Do you realize the possibilities of UNIVERSAL FINANCE CORPORATION Participating Preferred Stock, at this time? As you no doubt know, fortunes are made by investing in the securities of financial institutions on a basis where you participate in the net earnings, and where you get in on the so-called 'ground floor,' enjoying a natural appreciation in the value of your investment *in addition to handsome dividends you receive.*

"Here are the major facts concerning this corporation:

"This is a 6 per cent. Participating Preferred Stock, which means, after the 6 per cent. is set aside for dividends, one-half of the remaining net profits are distributed to holders of this stock.

"Broadcasting security offerings over the radio is permitted only after a very thorough investigation.

"The business is under the supervision of the Department of Banking and Insurance of the State of New Jersey.

Reading Exhibit S. 4.

"Now paying dividends of 10 per cent. per annum; this to be increased to 12 per cent. on January 1st, 1929; all out of earnings, and still adding to surplus account.

"The Treasurer of the Corporation, Mr. Dewi T. Evans, State Examiner, Division of Securities, Attorney General's office, of the State of New Jersey.

"All detail work is in the hands of Haskins & Sells, one of the leading firms of certified public accountants of the United States.

"Finally, the increase in dividend rate will naturally cause a sharp increase in the price of these shares.

"The above facts are causing conservative investors to BUY NOW.

"We want to protect you at the $15.00 price and have made a temporary reservation for you. Wire at once the number of shares you desire and mail check.

"Later I will look for a letter from you, thanking me for giving you this opportunity.

Yours very truly,

FINANCIAL INVESTMENT CORPORATION.

(Signed) W. F. Cawthorne,
Treasurer."

Reading Exhibit S. 7.

Now, I will read from the transcript of the testimony of Alexander Graham Edwards, Exhibit S. 7, and I am reading only excerpts. I think I may properly describe to the jury what this is.

The Court: All right.

Mr. Conlon: This, gentlemen, is a transcript of the testimony of the defendant Edwards.

The Court: A transcript of the testimony or a transcript of his voluntary admission, isn't that what it was? It was not before any tribunal?

Mr. Conlon: No; it is a transcript of his voluntary statement, under oath, in the presence of Mr. Squire, who took it, down in the Prosecutor's office. The questions are by me and the answers are by him. (Reading.)

"Q How much did you sell of the Public Service Finance Corporation? A That entire issue has been sold now.

"Q How much does that amount to? A 25,000 shares was the original lump capitalization.

"Q Did the Public Service Finance office have anything to do with the Universal Finance Company's business? A Yes, the Public Service simply changed its name at the request of the Public Service Corporation who served cases, and Judge Speer of the Public Service Corporation suggested the name Universal Finance Company."

* * * * * * * *

"Q How did you come to be connected with the Public Service Finance Company? A When I was selling the Plaza Loan Society I saw that it was a lucrative business and I saw other small loan companies

Reading Exhibit S. 7.

throughout Newark and Jersey City, they are generally upstairs in some office building and it appeared to me that with proper management and to bring the business out in the open, that it was a wonderful opportunity to conduct it as a business should be run, so I got in touch with Mr. Hollenbaugh, who I had engaged on the Plaza Loan Society deal, and he was an expert radio man with a view of organizing the company.

"Q What was Hollenbaugh's name? A Dale Davis Hollenbaugh. On the radio he had been going three or four years under the name of Dale Davis. He gets programs together, and so forth.

"Q What was your suggestion to him? A I explained about the business and told him to look into it and see if it was satisfactory to him and he felt the same about it, as I did, and if so to organize the company.

"Q As a result of that you organized the Public Service Finance Company? A Yes, sir.

"Q Who was in the Public Service Finance Company? A After Mr. Hollenbaugh agreed to join me we next went to Mr. Mercereau. Mr. Hollenbaugh knew that he had been credit manager for L. Bamberger & Company eight years or more and resigned his position as credit manager to accept one with Kresge as credit manager for more money, and we approached him to become identified with the company, but his position would not allow him to at the time and he suggested Mr. Frank Tappin, who had been credit manager for Mullen & Sons,

Reading Exhibit S. 7.

and so we got Mr. Tappin in touch with us, and he said he knew about the business as he was also a director in the Newark Credit Men's Association. He joined us and then we took the matter up with Mr. Evans and he knew the small loan business, and decided to join us.

"Q Did you know Mr. Evans before that? A No, I had seen him, but I don't believe I knew him. When I first undertook the Plaza Loan Society I took one of their men over to the Attorney General's office to have them look over it to know that I was all right before I undertook to sell the stock and I saw Mr. Evans at that time, and I haven't seen him from that time until we organized the Public Service Finance Company.

"Q Was it your idea to get Mr. Evans into the Public Service Finance Company? A I just don't recollect.

"Q Do you know whether the other men did or not? A No, they did not."

* * * * * * * *

"Q How much common stock did you issue? A 5,000 shares.

"Q With any par value? A No par.

"Q How many shares did Tappin get, do you remember? A 333 or 334, I think.

"Q Did he pay anything for them? A He paid for them.

"Q Did Tappin pay anything for these shares? A No, I did for Tappin.

"Q How much did you pay? A 25 cents a share.

Reading Exhibit S. 7.

"Q How did Tappin secure you for that payment? A Why did I pay for them?

"Q Yes. A Because my family had control and I thought it was the only fair thing to do.

"Q All the common stock was paid for at 25 cents a share? A Yes, sir.

"Q Why did you pay for Tappin's shares? A Because when we voted to organize the company we had control of it and I thought it was the only fair thing to do for their stock, inasmuch as they had the minority.

"Q How many shares did Evans get? A 333.

"Q Did he pay anything for them? A No, I did.

"Q You paid for his shares? A I paid for all.

"Q What about Fitzmaurice? A The same thing.

"Q He had how many? A 333.

"Q What about Dale Hallenbaugh? A He had 1333—1334.

"Q Hollenbaugh did? A Yes.

"Q I thought he only had 500? A Yes, he did have 500.

"Q Who paid for them? A I did.

"Q What about Belle Edwards? She is your wife? A Mother.

"Q She got how many? A 1332 or 1333.

"Q L. H. Edwards. A The same.

"Q T. P. Edwards is whom? A My brother.

Reading Exhibit S. 7.

"Q 833 for him? A Something like that.

"Q You held no shares? A No shares.

"Q The total number of shares issued was 5,000? A Yes, sir.

"Q How much cash did you put into the company? A $1,250.

"Q That was all cash put in? A For common stock.

"Q That was all put in by you? A Yes, sir. There was more than that put in. I also paid for some preferred stock which Mr. Fitzmaurice, Mr. Tappin and Mr. Evans had.

"Q How much preferred stock did Tappin have? A He had 35 shares.

"Q Issued and paid for? A Yes, sir.

"Q At how much? A $10.

"Q 35 shares for Tappin? A Yes, sir.

"Q 35 shares for Fitzmaurice? A Yes, sir.

"Q Anybody else? A No.

"Q That is $1,050 you paid for preferred stock? A Yes, sir.

"Q So there was payable on the original investment $2,300? A Yes, sir.

"Q That was all put in by you? A Yes, sir.

"Q Why didn't you take shares yourself? A Because I didn't think it was good business when I was to take charge of the security end of the business.

"Q You mean you took charge of the selling of securities? A Yes, sir.

"Q Nothing to do with the Universal Finance Company? A No, I was not an

Reading Exhibit S. 7.

officer or director or anything in that company in an official capacity."

* * * * * * * *

"Q (By Mr. Conlon.) Of the 5,000 how much does your mother, wife and brother own? A Approximately 52 per cent."

* * * * * * * *

"Q Did you have a contract with either the Financial Investment Corporation or the Universal Finance Company, you personally? A Prior to that, yes.

"Q With whom did you have that contract? A With the Public Service Company and after that name was changed to the Universal Finance Company, then the Financial Investment Company came into the picture.

"Q That was originally a contract between you and the Public Service Finance Company? A Yes, sir.

"Q Was that contract in writing? A Yes, sir.

"Q What was the effect of it? A I was to receive twenty-five per cent. commission and pay all expenses and pay the expenses of the corporation itself up until June 30th.

"Q You were to sell the preferred stock of the Universal Finance Company? A Yes, sir.

"Q There was no more common stock to be sold? A No common offered to be sold."

"Q (By Judge Forlenza.) Did the preferred stock have holding rights—"

Reading Exhibit S. 7.

Mr. Vickers: That has no sense as it reads, "Holding rights." I am willing to consent that it should be "voting rights."

Mr. Conlon: (Continues reading.)

"A Yes, if they defaulted in dividends in two years the preferred stock voted.

"Q (By Mr. Conlon.) Did the Financial Investment Company have a contract with the Universal Finance Company? A Yes, sir.

"Q Was that in writing? A Yes, sir.

"Q What was that? A 25 per cent.

"Q Practically? A Practically the same.

"Q Confirmed by contract with you? A Yes, only to June 30th, then the Universal Finance Company was to pay their own overhead expenses; prior to that time I paid it out of the common.

"Q Did the Universal Finance Company pay it? A After June 30th, yes."

* * * * * * * *

"Q What was your method of selling stock? A Over the radio.

"Q Over what station did you broadcast? A—"

Mr. Conlon: I think this should be W. G. C. P., W. A. A. T., W. A. B. C., W. M. A. K.

Mr. Vickers: I think that is so.

"Q Who did the broadcasting? A Mr. Hollenbaugh and myself, occasionally Mr. Cawthorne, or sometimes he may have the announcer talk.

Reading Exhibit S. 7.

"Q What was the general tenor of the sales talks over the radio? A Well, that we were offering a six per cent. preferred stock participating up to fifty per cent. on a ten per cent. dividend basis and this business is under the supervision of the Banking Department and we called it industrial banking until the last time we were notified by Mr. Hilson that term should be changed.

"Q What term did you use then? A Industrial loan.

"Q Did you refer to the fact it was bonded? A Yes, the company was licensed by and bonded to and its business supervised by the Banking Department; that's the way it was phrased.

"Q What was the amount of the bond you put up? A The company? $5,000.

"Q Who went on that bond? A That is the company to the state department.

"Q Was that a surety bond? A Yes, sir.

"Q When was the first dividend paid? A June 30th.

"Q That was a ten per cent. dividend? A On the basis of ten per cent. two and a half per cent.

"Q On the basis of two and a half per cent. annual dividend? A Yes, sir.

"Q A quarterly dividend was paid June 1st? A June 30th."

* * * * * * * *

"Q What did that statement show? A It showed—I don't know what the capital surplus was, I don't remember, but I do remember that there was a deficit—I wouldn't

Reading Exhibit S. 7.

call it a deficit, but there was a surplus, but it appeared as though from the statement that the devidends or a portion of the dividends had been paid from the capital surplus, not the capital. On the same statement Hasken & Sells mentioned that they did not include the accrued interest due on industrial loans; whether they did not include the interest and rights from investments that the company held."

* * * * * * * *

"Q Then it would be only the interest for the current month plus the interest in arrears? A Yes, in my opinion, knowing the securities the company held there was ample to pay a dividend out of the earnings.

"Q Still the statement showed dividends were paid out of the capital? A A portion, but they made a memoranda on the statement that the accrued interest was not included in it."

Mr. Conlon: Now I am reading from the middle of page 20.

"Q You continued your radio broadcasting? A Yes, sir.

"Q Who made the sales talk on the radio from the 30th of June on? A Mr. Hollenbaugh and myself.

"Q Did anybody else? A Occasionally there may have been someone, Mr. Cawthorne, or one of the announcers may have filled in.

"Q Who wrote up the material? A I wrote it up and Mr. Hollenbaugh.

Reading Exhibit S. 7.

"Q It was all written up so it could be read over the radio? A Yes, sir.

"Q Nothing said over the radio was spontaneous? A No, unless something was left out.

* * * * * * * *

"Q When was the next dividend paid after the 30th of June? A September 30th, June 30th and September 30th.

"Q Do you know the status of the books of the Universal Finance Company at that time? A No.

"Q Did you see this statement? A I have seen it, but I couldn't tell you the figures on it.

"Q Do you know whether or not the dividends on that occasion were paid out of the capital? A No, I don't think they were. I think they were paid out of the earnings.

"Q What makes you think they were paid out of the earnings? A Because I know that the company was doing a good business.

"Q Then, your thought on that subject is based upon the fact that the company was doing a good business and not upon the fact of information you got from the statement? A I haven't a mental picture of the statement, I don't remember, but I know there were some profits, I think Mr. Evans made a nice profit, he sold some securities in addition to their loan business.

"Q Do you know as a matter of fact whether or not the dividends paid were paid out of the earnings? A No, I wouldn't swear to it, no.

"Q Was there a subsequent dividend paid? A No.

Reading Exhibit S. 7.

"Q That was the last one? A There is one to be paid December 31st."

* * * * * * * *

"Q Do you know how they were getting along or conducting the business? A I knew that things were going along good; they told me that.

"Q Just what was told to you? A Yes, sir.

"Q You personally did not know it yourself? A I wasn't in the Universal Finance Company more than two hours in three weeks.

"Q You were busy on the other business? A Yes, that and my real estate business.

"Q You gave your men literature? A Yes, sir.

"Q You knew that they were representing that to their prospects? A What was contained in the literature.

"Q What you told them and what was contained in the literature? A Yes, sir.

"Q Among other things that this Universal Finance Company was under the supervision of the Department of Banking and Insurance? A Yes, sir.

"Q Under a bond of the State? A Yes, sir.

"Q And that the stock was six per cent. cumulative stock? A Yes, sir.

"Q Participating in fifty per cent. of the net earnings? A Yes, sir.

"Q And that it was a ten per cent. dividend paying basis? A Yes, sir.

"Q You knew that your men were out representing that to the public? A Yes, sir.

Reading Exhibit S. 7.

"Q Did you, as a matter of fact, know whether or not the corporation was on a ten per cent. dividend paying basis? A Surely, they sent out dividend notices.

"Q Was that the only source of your information? A They told me so.

"Q Who? A Mr. Evans, Mr. Hollenbaugh."

Mr. Conlon: Now, I am reading at the top of page 25 and the bottom of page 25.

"Q Look at these three pamphlets marked Exhibits 1, 2 and 3. Are those literature you remember seeing? A Yes, sir.

"Q Who decided upon the increase in the stock from $14 to $15, and from $15 to $16? A The Universal Finance Company.

"Q Did you have anything to say about that? A Well, I was consulted on it.

"Q What was the reason for it? A The company was making very good progress and at the rate the dividends it was paying it was worth it."

* * * * * * * *

"Q You did not know at the time whether or not they even made enough to pay dividends? A No, but taking the men, such as they were, I had implicit confidence and I know they would not misinform me knowingly and they had Hasken & Sells who are very good auditors and authority on accounting."

Mr. Vickers: I ask that Mr. Conlon read from page 16, after the question, "What investments did the company hold?" I think that that is relevant.

Mr. Conlon: At the bottom of page 16.

"Q What investments did the company hold? A About $180,000 worth.

"Q Of what? A National City Bank, New York; Hanover National Bank, Guaranty Trust Company, A. T. & T., Westinghouse Electric, Pullman Company, Sears Roebuck."

Mr. Vickers: Now, will you turn to page 24, on the next line, the next question, where you leave off, which relates to where he got his information. "Question. Anybody else."

Mr. Conlon (reading.): "Was that the only source of your information? A They told me so. Q Who? A Mr. Evans, Mr. Hollenbaugh. Q Anybody else? A Mr. Fitzmaurice did. He didn't tell me, but it was passed by the directors."

Mr. Vickers. That is all.

D. FREDERICK BURNETT, sworn in behalf of the State.

Direct examination by Mr. Conlon.

Q Mr. Burnett, you are an attorney and counselor at law of this State? A Yes, sir.

Q During the latter part of 1928 did you hold any special appointment? A Yes.

Q What? A As counsel to the State Legislative Commission which was investigating the Department of Banking & Insurance.

Q What is that Commission known as? A The Davis Commission.

Q As such did you conduct the hearings before that Commission? A I did, yes.

Q And did you conduct the hearings, before that Commission, with reference to the affairs of the Universal Finance Corporation? A I did.

Q Where were they conducted? A At Trenton, State House.

Q There are how many members in that Commission? A Six, three Senators and three Assemblymen.

Q That investigation was conducted by you, was it? A It was, throughout.

Q And there was a stenographic transcript made of the testimony? A There was.

Q Were there any advertising matters of this concern produced before you at this time?

Mr. Vickers: I object to that on the ground that it is not competent, if intended to be binding on these defendants, as produced by them.

The Court: Your objection is that it is incompetent unless produced by them?

Mr. Vickers: Not competent if produced by them, under the Evidence Act, relating particularly to legislative investigations, such as that conducted by the Davis Committee. Section 67 of the Evidence Act, Compiled Statutes, 241.

The Court: Objection sustained.

Mr. Conlon: My understanding of that section is that it had the same effect as the section in the Securities Act which allows the privilege only in case there is an objection interposed by the witness.

The Court: Would not this produce the effect, by indirection that you cannot produce by direction? I think it is objectionable. I think the statute is sufficiently broad to cover it. I think the object is to protect the witness in such testimony as he may give before the Legislative Committee. If you please, it is a quasi-immunity for such testimony as he gives before that Committee.

Mr. Conlon: I will withdraw Mr. Burnett.

RICHARD C. PLUMER, recalled.

Direct examination by Mr. Conlon.

Q Mr. Plumer, you testified, I believe, that you were a special Assistant Attorney General, is that right? A I did.

Q You were assistant to Attorney General Edward Katzenbach? A Yes.

Q You have your office in Newark? A Yes.

Mr. Vickers: I wish to object at this time; if Mr. Conlon says he overlooked something of course it is within your discretion

Mr. Conlon: Mr. Plumer was produced before to identify a certain batch of papers, which were put in. I don't know where that forecloses me from examining him further.

Mr. Vickers: Was this overlooked by the Prosecutor before?

Mr. Conlon: Not at all, your Honor.

The Court: I think it is within my discretion. I will permit it.

Richard C. Plumer, recalled, direct.

Q You were assigned to what division? A I was assigned to carry out the provisions of what is known as—

The Court: That is all in the record.

Q What do you call it? A It is known as the New Jersey Securities Act.

Q What were your duties?

Mr. Vickers: I object to that as immaterial and irrelevant.

Mr. Conlon: I will connect it up.

The Court: Objection overruled.

Defendants' counsel prays an exception to this ruling of the Court. Exception allowed. Let it be sealed; and it is signed and sealed accordingly.

DANIEL J. BRENNAN,
Judge.

Q Generally, what are your duties? A Carrying into effect the provisions of the New Jersey Securities Act.

Q What is that?

Mr. Vickers: I object, on the ground that that is a question of law that counsel is not entitled to ask against the defendant's objection.

The Court: I will sustain the objection. This witness may tell, generally, what the nature of his duties are.

Q Will you amplify that and tell me what the nature of your duties are? A That which

I have given you are the words of the statute. The only way I can amplify it is—

Q (By the Court) Tell us what you do. A The statute declares unlawful certain practices in connection with a mortgage issue, namely, misrepresentation, suppression and other things which are enumerated specifically, and the Attorney General is given power to issue subpoenas, and the persons so subpoened under the law—

Q Is he given power to inquire into the propriety of stock issues of corporations? A Yes, he is.

Q And your duties are in that connection, are they? A Yes, sir.

Q (By Mr. Conlon) Do you know Dewi T. Evans? A I do.

Q How long have you known him? A Since about July, 1927, or possibly June, 1927.

Q What was his occupation during the period of your acquaintance with him? A He was appointed by Mr. Katzenbach as what is known as an examiner of securities, in connection with the carrying out of the provisions of this act.

Q Working under you? A Yes.

Q Entirely under you? A Yes; but of course under the supervision of the Attorney General.

Q But under your direction? A Yes.

Q He worked out of your office at 24 Commerce street, did he? A Yes.

Q I show you a letter dated May 25, purporting to be on the letter head of the Department of the Attorney General, and ask you if you recognize the signature on that letter. A I do, yes.

Q Whose signature is it? A The signature of Dewi T. Evans.

Richard C. Plumer, recalled, direct.

Q Is that letter— A It is written on the letter head of the Attorney General, division of securities.

Q At your direction, was it written? A No.

Q Or with your knowledge? A No.

Q Was your knowledge called to the letter immediately before or immediately after it was written? A It was not.

Q When did you first learn of the letter, approximately? A To the best of my recollection, the first I saw the letter was in the office of Mr. Burnett, or at Trenton at the time of some testimony being given there in the latter part of December, 1928, probably between the 25th and 30th of December.

Q Of December last? A Last.

Q I show you another letter dated March 29. Whose signature is attached to that letter? A That is the signature of Dewi T. Evans

Q Did you have any knowledge of the writing of that letter? A No sir.

Q Was it written under your direction? A It was not.

Q Were you consulted about it either before or after it was sent? A No.

Q When did you first learn of its existence? A The same situation holds true of this letter as holds true of the other letter.

Q That was, that you saw it in December? A Yes; or in the office of Mr. Burnett. I don't remember which place I saw it first.

Q That was at the time of the legislative investigation? A Yes.

Mr. Vickers: That is objected to on the ground that it is not within the indictment.

The Court: Objection overruled.

Richard C. Plumer, recalled, direct.

Defendants' counsel prays an exception to this ruling of the Court.

Exception allowed; let it be sealed and it is signed and sealed accordingly.

DANIEL J. BRENNAN,
Judge.

Mr. Conlon: I offer them in evidence.

(Marked Exhibit S. 10 and Exhibit S. 11.)

(Mr. Conlon reads Exhibit S. 10 and Exhibit S. 11 to the jury.)

Q Now, Mr. Plumer, when correspondence is sent out of your office is there any record made of it? A A carbon copy of each letter is kept.

Q When you say "each letter," do you mean some letters or every letter? A Every letter that goes out of the office is supposed to have a carbon copy made of it.

Q Does anybody besides you send correspondence out of the office? A Yes.

Q Who? A All of those in there except the stenographers, who take the dictation.

Q And did Mr. Evans? A Yes.

Q Carbon copies of these letters were kept in the file? A Yes; those are my instructions, that carbon copies of all letters are kept in the files.

Q After these letters came to your attention did you make any investigation to find out whether there were carbon copies in the files?

Mr. Vickers: I object.

The Court: Objection sustained.

Mr. Conlon: I think it goes to the matter of the concealment of these representations.

Richard C. Plumer, recalled, direct.

Q Did you find a carbon copy of all of these letters? A No; I have never found any carbon copies of either of those letters.

Q Did anybody else find them? A No, sir. If they did, they never told me.

Q What? A If anyone did that person has not told me.

Q Now, Mr. Plumer, did you conduct an investigation into the affairs of the Universal Finance Corporation? A I did, yes, sir.

Q When did you institute this investigation? A The subpoena to which I referred this morning was sent out some few days before the 19th of December, and the examination of the witnesses to which I referred took place, actually, in December, 1928.

Q In December, 1928? A 1928.

Q Was there a transcript of that investigation made? A There was.

Q Have you got it? A I have it here.

Q Will you let me have it? A (Witness hands paper to Mr. Conlon.) This is a transcript of the testimony and all the exhibits are in there.

Q Now, this examination was conducted by you? A Yes.

Q And the statements of the witnesses taken down stenographically? A Yes.

Q Who did you examine under that? A Mr. Perry, Mr. Edwards, Mr. Cawthorne and later Mr. Evans.

Q Referring to Mr. Edwards, do you remember what he said to you on that occasion about the organization and operation of the Financial Investment and Universal Finance Corporation?

Mr. Hobart: Now, if your Honor please, if this question is preliminary to offering in

evidence, either in whole or in part, any of the examination of Mr. Plumer, I wish to object to it.

Mr. Conlon: That is not the purpose.

The Court: Then do you withdraw your objection?

Mr. Hobart: I think the question, as presented so far, necessarily leads to that conclusion.

The Court: I will permit him to answer this question.

Mr. Conlon: It calls for an answer yes or no.

By the Court.

Q Answer the question yes or no, Mr. Plumer, please. A Yes; to some extent.

Q No; just yes or no. A I cannot answer unqualifiedly, yes, to that question.

By Mr. Conlon.

Q Do you remember, generally, the purport of his statement regarding the operation of these two companies? Answer yes or no. A Yes; I remember some of the things that he said.

Q Now, you had some literature in your possession at that time? A Some literature was offered.

Q You saw it? A Yes, I saw it at that time.

Q Was it the same literature as I am now showing you, Exhibits S. 1 to S. 5?

Mr. Hobart: Does the Prosecutor state that these are the same letters that are already in evidence?

Mr. Conlon: Yes, Exhibits 1 to 5.

Mr. Hobart: Then we have no objection, if they are already in evidence.

A This paper, which has been marked Exhibit 2, appears to be an exact copy of—

Mr. Vickers: I object to the witness characterizing any of these papers.

Q As nearly as you can remember—

Mr. Vickers: No, I object to that.

The Court: Is that the purport of your inquiry, whether they are the same?

Mr. Conlon: "As nearly as I can remember"—He says as nearly as he can remember that is an exact copy.

The Court: How can he say as nearly as he can remember? There may be some very definite departure as between one and the other. How is it material, in any event? These are already in evidence.

Mr. Conlon: Because I want to connect them up with admissions.

The Court: If he can state whether they are exact copies or not I will let him answer.

Q Do you know whether or not they are? A If I can be permitted to refresh my recollection from my own records I can testify. I have with me photostat copies of all papers.

Q Will they refresh your recollection? A Yes.

Q Then use them or not, as you see fit, to refresh your recolleection, Mr. Plumer. At the

time that you found out about these two letters, Exhibits S. 9 and S. 10, was Evans in your employ?

The Court: Is there a question standing unanswered?

Mr. Conlon: If there was, I will withdraw it.

Q At the time you found out about these two letters, Exhibits S. 9 and S. 10, was Evans in your employ? A My recollection is that he was, yes.

Q How long after that did he remain in your employ?

Mr. Vickers: I object to that as immaterial and incompetent.

The Court: Objection sustained.

Q I show you some literature. Do you know now whether or not you saw copies of this literature? A The paper marked Exhibit 2, by the stenographer in this Court—

By the Court.

Q S. 2? A No.

By Mr. Conlon.

Q No. What about 3? A That is one of the papers that was handed to me.

Q What about 3? A The same holds true of Exhibit 3, and the same holds true of Exhibit 1.

Q Those were handed to you by whom? A (No response.)

Richard C. Plumer, recalled, cross.

Q Never mind that. Did you ask any of these men about these exhibits when you conducted that examination? A Why, they were handed to me—

By the Court.

Q Did you ask any of these men about any of these exhibits when you conducted your examination, that is the question? A Yes.

By Mr. Conlon.

Q What did they say about them?

Mr. Hobart: I object. That is equivalent to compulsory incrimination. That is in violation of the State Statute of this State and two sections of the Fourteenth Amendment of the Constitution of the United States.

The Court: Objection sustained.

Cross examination by Mr. Vickers.

Q Mr. Plumer, long before December, 1928, you knew about Mr. Evans' connection with the Universal Finance Company, didn't you?

Mr. Conlon: I object. That is not cross examination. My examination was shut off; I do not see why the cross examination should be allowed.

The Court: I will allow him to answer this question.

By the Court.

Q Answer yes or no. A No.

Richard C. Plumer, recalled, cross.

By Mr. Vickers.

Q Tell us, as nearly as you can, when you first learned of Mr. Evans' connection with the Universal Finance Company? A Why, my first knowledge of his connection with the Universal Finance Company came, as near as I can recollect, in April of 1928.

Q And from whom did it come? A It came in a conversation with him. He asked me if a letter had come for him, and it appears that a letter was around there, and I think I handed it to him and he said that he had gone in on a business deal, or something of that sort.

Q He told you what it was, didn't he?

The Court: What difference does that make, Colonel?

Mr. Vickers: It rebuts an inference which the jury might possibly draw, that this was secretive and rebuts the opening by the State.

The Court: What authority would Mr. Plumer have in the premises? I understand this man was employed by the Attorney General. He had no power to remove, did he?

Mr. Vickers: No, but it is a question whether or not this matter was secretive or open.

The Court: On that theory I will permit it.

Q (Question read.) A He told me that it was "small loan," yes.

Q Did he tell you who the persons were with whom he was associated? A I cannot recollect

that he did. I later, however, saw some literature.

Q I asked you what he said. Didn't he at that time tell you, or didn't you make inquiry to ascertain that some of the persons associated with him you knew personally, well? A Either at that time or shortly after, I did.

Q And by "shortly after," do you mean prior to the latter part of May, 1928? A Yes; I should say it was before that.

Q And it is a fact, is it not, that you did know one or more of the officers of that company, personally, well, and their reputation for integrity?

Mr. Conlon: I object.

The Court: Objection sustained.

Q It is a fact that you did know some of the officers, isn't it? A Yes.

Q Do you know whom he told you about? A Richard Fitzmaurice was an officer; and I knew, of course, the firm of McCarter & English, whose name appears as counsel for the organization.

Q How long had you known Mr. Evans? A Since June or July, 1927.

Q Had you known him in connection with any Department of State, in Trenton, prior to that?

Mr. Conlon: I object.

The Court: Objection sustained.

Q I show you Exhibit S. 10 and I ask you if you know whose handwriting that is, in lead pencil, on the exhibit? A No.

Mr. Hobart: No questions.

Richard C. Plumer, recalled, re-direct.

Re-direct examination by Mr. Conlon.

Q When did you first know, from Mr. Evans, that he was promoting the sale, or helping to promote the sale, of the stock of the Universal Finance Corporation? A I don't know when that was. In this examination which I conducted I asked him about it, and he replied—

Q Did you know it before then? A Not directly; I didn't know whether he was or not.

Q Did you find out that he and his associates in the company were advertising that stock for sale, and representing that it was making ten per cent. paying ten per cent. dividends out of earnings? A When did I first find it out?

Q When did you first find it out, if you did find it out? A This examination was the first direct knowledge that I had of it.

By the Court.

Q When was that? A The examination was December 20, 1928.

By Mr. Conlon.

Q Had you, prior to that time, seen any of the advertising literature which was used in the examination? A I had seen some of the advertising and some of the literature. My recollection is that there were some statements on some of that literature as to dividends and other things. What they were I don't know; it is impossible for me to remember.

Q Do you know when that was, prior to the examination? A No; I cannot remember.

Joseph S. Armour, direct.

Q Do you know whether it was prior to the examination? A Yes, it was prior to the examination; there is no question about that.

Re-cross examination by Mr. Vickers.

Q Mr. Plumer, as a matter of fact, when you refer to some circular or some circulars, you saw those in the hands of Mr. Evans, didn't you? A I remember one incident sometime—I don't know exactly how long after my first conversation, in which I saw some literature with his name, with his title as examiner of securities, or whatever it may have been, and I told him, "You must cease using that."

Q That was in April, or about April, 1928, wasn't it? A It must have been in April or May.

Q You learned, did you not, that both he and the company issuing that circular discontinued its use, isn't that right? A He informed me that he discontinued it and I saw none of them after that.

Q You saw another circular which did not use the title, is that right? A Yes.

JOSEPH S. ARMOUR, sworn on behalf of the State.

Direct examination by Mr. Conlon.

Q Where do you live? A 8 Draw Court, Hamilton Beach, Long Island.

Q Did you live there in the month of June, 1928? A Yes, sir.

Q Were you ever in the office of the Financial Investment Corporation, 605 Broad street, Newark? A Yes, sir.

Q When was the first time you were there? A It might have been the week previous to July 20, 1928.

Q You mean it was around July? A Around the middle of July.

Q How did you come to go there? A I heard them broadcasting over the radio about selling shares, $15 a share.

Q Do you remember what station they were broadcasting over? A I think it was WABC.

Q What else do you remember about their broadcasting? A Well, they made statements about increasing dividends from six to ten per cent.

Q What else do you remember, anything else? A Well, I cannot remember very much; it has kind of went off my mind since.

Q Then it was as a result of that radio talk that you heard, that you came to the office in the middle of July? A Yes.

Q Whom did you see? A Mr. Cawthorne.

Q He was in the office? A Yes.

Q Did you talk to him? A Yes.

Q What did you talk about? A Buying ten shares.

Q What did Mr. Cawthorne say about it? A Well, simply that they offered dividends of six per cent., and were increasing, to make ten per cent. That is about all; there wasn't much conversation.

Q Did you hear the name of Dewi T. Evans mentioned? A Yes, I did.

Q Who mentioned his name? A Mr. Cawthorne.

Q What did he say about Mr. Evans? A Well, he said that he was a very honorable gentleman; that he conducted everything in a very honest manner; he spoke very highly of him.

Q Did he tell you what his business was? A He told me he was somewhat connected with the Attorney General's Office, as near as I can remember.

Q What did he say about this investment of yours, as to its safety or unsafety? A He said it was perfectly secured.

Q Did he say anything about the price of the stock or value of the stock, whether it was worth what you were paying?

Mr. Vickers: I object to that as leading.

Q What did he say to you about the value of the stock that you were buying at $15 a share? A Well, I cannot recall what he said at that time.

Q Did he say anything, do you remember? A He simply said that it was $15 a share; that it was perfectly secured; that was all. We didn't have much of a conversation over any other matter; it was very brief. I simply went there and bought the stock. I had very little to say about it, thinking, of course, that it was all right.

Q Did you intend to buy this stock when you went there? A Well, I was making up my mind.

Q Did the talk that you heard on the radio have anything to do with your intention? A Yes; it influenced me to buy that stock.

Q Did you pay Mr. Cawthorne any money that day? A Not on the first visit.

Q Did you go back again? A I went back at the same time.

Q You gave him how much? A $100.

Q Did you give him any other money, subsequently? A Well, possibly two weeks later I gave him $50, making a total of $150 for the ten shares.

New Jersey State Library

Q Did you receive a certificate for it? A Yes, I did.

Q Did you ever receive a dividend? A Yes, I did.

Q When? A I received three dividends.

Q When was the first one? A I think it was about three months after I bought the stock I received a dividend of $1.28. That was the first dividend.

Q Then you say you received subsequent dividends? A I received two more after that, possibly three months intervening.

Cross examination by Mr. Hobart.

Q This is your original subscription, is it not, the paper that I show you with your name on it (indicating)? A Well, it looks like my handwriting, yes.

Mr. Hobart: I ask that that be marked for identification.

(Marked D. 2 for identification.)

Q I call your attention to the date on this D. 2, July 20, 1928. Do you remember whether you paid your $100 on that date or a few days thereafter? A I think I paid it later on, after that.

Q Paid it on or after July 28th? A I got a copy, a duplicate of that, in my pocket, I think. Would you like to see it?

Q Yes, I would like to see it. Whoever attended to your subscription for this gave you a duplicate copy, after, for your own records? A Yes, sir.

Q Which you have preserved ever since? A Yes.

Mr. Hobart: I ask that that be marked for identification.

(Marked D. 3 for identification.)

Q Then, a few days later, on or about July 28th, you made your payment of $100, did you not? A Yes.

Q Perhaps you don't recall the exact date. A Not the exact date, but about that.

Q Then, about the middle of August, you paid the balance, $50? A Later on, yes.

Q That was about the middle of August? A It might have been around the middle of August.

Q You recall that later a stock certificate was issued, on or about August 14, 1928? A Yes.

Q Have you got it with you? A I have got it with me.

Q All right. Let us look at that. A (Witness produces same.)

Q You produce a paper which is marked "No. 273" ten shares, made out in your name; this is the stock certificate? A Yes.

Q Dated August 16, 1928? A (No response.)

Mr. Hobart: I ask that it be marked for identification.

(Marked D. 4 for identification.)

Q This stock certificate came to you from the Broad & Market National Bank, did it, or from a bank in Newark? A It came from some bank in Newark, that is about all I know about it. Where it came from, I don't know.

Q Was there any letter with it? A There might have been; I don't recall, now.

Q At any rate, you did receive it from some bank? A Yes.

Q You notice on the back of the certificate is printed "Broad & Market National Bank, Newark, New Jersey." Does that refresh your recollection as to whether it did come from that bank? A I think it did.

Q You think it did. And you received a dividend shortly after October 1st, did you not? A Well, I cannot remember the date, now, that I received it.

Q When did you receive the next dividend? You said you received two more. Was it some time about the middle of March, of this year?

Mr. Conlon: I object.

The Court: Objection sustained.

A I cannot remember the date.

Mr. Hobart: The Prosecutor brought out the fact that he had received three dividends. May I not bring out the dates of the dividends?

The Court: He says he cannot remember.

Mr. Conlon: My objection is to anything that happened in March of this year, as having nothing to do with the indictment.

Mr. Hobart: He brought it out himself, that he had received three dividends.

The Court: I do not think it is material, what happened after.

Mr. Hobart: To get the matter on the record, I will ask to show the date when the two later dividends were received.

The Court: The offer is rejected. An exception may be noted on the record. De-

fendants' counsel prays an exception to this ruling of the Court.

Exception allowed; let it be sealed; and it is signed and sealed accordingly.

DANIEL J. BRENNAN,
Judge.

Q Do you consider that you were in any way deceived when you received—

Mr. Conlon: I object.

The Court: Objection sustained.

Defendants' counsel prays an exception to this rulng of the Court.

Exception allowed; let it be sealed; and it is signed and sealed accordingly.

DANIEL J. BRENNAN,
Judge.

Q Have you any kick coming—

Mr. Conlon: I object.

The Court: Objection sustained. These are very highly objectionable questions.

Defendants' counsel prays an exception to this ruling of the Court.

Exception allowed; let it be sealed; and it is signed and sealed accordingly.

DANIEL J. BRENNAN,
Judge.

Re-direct examination by Mr. Conlon.

Q I call your attention to Exhibit D. 3 for identification. Did any member of this corporation call your attention to this sentence con-

tained in that contract? I am now reading from the subscribing contract signed by you. "No statements or representations that are not contained in this agreement shall be binding upon the subscriber or corporation." Did anybody call that to your attention? A No, not that I recall.

Mr. Conlon: I offer that in evidence.

(Paper formerly marked D. 3 for identification marked Exhibit S. 12.)

Re-cross examination by Mr. Hobart.

Q You read English, of course? A Of course.

HENRY HARMEYER, sworn on behalf of the State.

Direct examination by Mr. Conlon.

Q Where do you live, Mr. Harmeyer? A Mamaroneck, New York.

Q Did you live there in July of last year? A Last year? Yes.

Q Did you buy any stock in the Universal Finance Corporation? A Yes.

Q When? A I started in on the 1st of May, 1928.

Q How did you first hear of the stock? A Over the radio.

Q Do you remember what station you heard it over? A I believe WABC.

Q What did you hear about it over the radio? A From what I could remember it was $14 a share at 6 per cent, par, on a 10 per cent. basis.

Henry Harmeyer, direct.

Q When you heard this come over the radio what if anything did you do? A I talked it over with my wife and we agreed we would try it.

Q What did you do then? A I went to the bank and I drew $1,050.

Q What did you do with that? A I went to the Public Service Finance Corporation.

Q Where was their office? A 810 Broad street.

Q In what city? A Newark.

Q When you got there whom did you see? A I seen a party named William Urmstom.

Q You saw him and gave him $1,050, do you say? A Yes.

Q You signed the subscription for that much stock? A Yes, sir.

Q Tell me again what was said to you, either over the radio or in the office, about the company? A Well, when I got in the office I asked—

By the Court.

Q Talk louder. A Well, when I got in the office I asked this gentleman here, Urmstom, how much the shares were. He said $14, at 6 per cent., on a 10 per cent. basis. I asked him whether it was safe, and he says yes, it was perfectly safe. He said, "Otherwise we could not broadcast it over the radio without the consent of the Government."

By Mr. Conlon.

Q Did you subsequently buy any more shares? A Yes, sir.

Q How did you come to buy them? A The next twenty-five I bought through a salesman.

Q Did you hear any talks between your first purchase and your second? A No, sir.

Q That salesman sold you these shares where? A He came over to my house in Mamaroneck.

Q How much did you buy? A Twenty-five.

Q How much did you pay for them? A $375.

Q Did you buy any more? A Yes.

Q When were the last shares you bought? A I believe somewhere around, I would say, the last one I got, on December 11th.

Q Did you hear anything about this stock between the second purchase and the third? A Well, that they were going up.

Q What was going up? A They were going up to $16.

Q Where did you hear that? A That was over the radio.

Q Do you remember what station you heard it over? A I really couldn't tell you, now.

Q Did that statement over the radio have anything to do with your buying this stock the last time? A Well, because they announced on the first of the year that it would go up to twelve per cent.

Q What would? A These stock shares.

Q You mean the dividends on the shares? A The dividends, yes.

Q What did they announce over the radio, as to the price? A The price was then $15; that it would be $16.

Q When would it be $16, do you remember? A Well—

Q No, I mean, did they say, over the radio, when the price would go up? A That I cannot remember.

Q It was after you heard that talk over the radio you bought the last twenty-five? A Yes.

Henry Harmeyer, cross.

Q Did you buy this from a salesman? A No; I just sent a check, and then I telephoned to Mr. Perry.

Q Did you talk to Mr. Perry over the telephone? A Yes; I said if he would send twenty-five shares I would send a check the next day.

Q Did you send the check? A Yes.

Cross examination by Mr. Vickers.

Q Now, when, in the first part of May, 1928, you heard this talk over the radio, as you say, over WABC, the price was then quoted at $14 a share, is that right? A $14, yes.

Q And it was represented, wasn't it, then, that this was a six per cent. preferred cumulative dividend stock, is that right? A Yes.

Q You understood what that was? A Yes.

Q That was not the first time you bought stock, was it? A Yes, sir; that is the first time; the first time I was ever in this kind of business.

Q The first time you ever bought stock? A Yes.

Q Was it then represented that this stock, in addition to the six per cent., participated in a fifty per cent.—in an additional dividend declared, is that right? A Yes.

Q At that time it was not represented that any dividend had been declared, in May, 1928, was it? A That I cannot remember.

Q The fact is, isn't it, Mr. Harmeyer, that you heard a number of these radio talks between the time that you first talked of buying your first shares of stock and December 11, 1928, when you bought the last of the stock, is that right? You heard a number of talks? A Yes.

Q And in the meantime, you also had talked with Mr. Urmstom at the office here, is that right? A When I bought the first seventy-five, yes.

Q How did you buy the second lot? That was from Mr. Urmstom, wasn't it? A No, from a salesman.

Q What was his name? A Plage.

Q P-l-a-g-e? A I think that is how you pronounce it.

Q Was it Pidge, P-i-d-g-e? A Yes.

Q I show you an original subscription contract dated July 5, 1928, and ask you whether you have a duplicate of that? Is that right? A (Witness produces paper.)

Q And it has the name T. H. Pidge signed to it. Is that the man you refer to, is that right? A Yes, sir.

Q I ask you whether it was not at that time that the first representation was made to you that this was a ten per cent. dividend stock? A Yes.

Q At that time you bought, you bought from Pidge? AYes.

Q And the last subscription was likewise for twenty-five shares, wasn't it? A Yes.

Q Have you a duplicate of that? A No, sir; that was telephoned for.

Q And on all of these subscriptions you have received the dividends represented by anyone connected with this company which the stock was paying—that it would bear, is that right?

Mr. Conlon: I object.

The Court: Objection sustained.

Defendants' counsel prays an exception to this ruling the Court.

Henry Harmeyer, cross.

Exception allowed; let it be sealed; and it is signed and sealed accordingly.

DANIEL J. BRENNAN,
Judge.

Q Have you received any dividend on that stock subscription? A Yes, sir.

Q When, if you can fix the date? A I cannot just fix the date, but I believe about four or five times.

Q And do you know at what rate you received the dividend?

Mr. Conlon: I object.

A Well, no—twelve per cent.

Mr. Conlon: I object to that.

The Court: I don't suppose whether or not he received any subsequent to the time named in the indictment is material.

Mr. Hobart: Well, I think we ought to have an understanding about that.

Mr. Conlon: I am willing to stipulate that the indictment was presented to the Court of Oyer and Terminer March 30, 1929. 1929.

The Court: (After argument.) I will permit it.

By the Court.

Q Do you know at what rate you got the dividend? A Well, I know it is twelve per cent., now.

Henry Harmeyer, cross.

By Mr. Vickers.

Q When did you get the twelve per cent. dividend? That is the point. Do you remember? A No, sir.

Q Well, as to what time, if you know, was the dividend paid to you? Did you get a letter from the company? Have you got it with you? A I think from January on.

Q This is a dividend payable January 2nd, is that right? A Yes, that is right.

Q You didn't receive that until about March 15th, isn't that a fact? A March 15th.

Q About March 15th, is that right? A Just a minute. I guess I haven't got it here—I guess that is right.

Q That is right. The twenty-five shares which you purchased about the 11th of December, did you purchase them at $15 a share? Is that right? A Yes.

Mr. Hobart: I would like to recall Mr. Armour and ask him if he did not receive a dividend.

The Court: Maybe the State will concede it.

Mr. Conlon: I object to it on this ground: that it is not material as to these specific witnesses. My contention is that at the time they bought this stock they made certain representations to them as to the then status of the stock.

The Court: Going to the implication that it is a dividend paying stock. (After further argument.) What the State contends is that these representations, if they were true—

Mr. Conlon: Yes. Now, what happened subsequent to that is not material.

The Court: But as I stated, all that the State has got to do is to show the financial condition of the company.

Mr. Conlon: But that opens up a very broad line of inquiry.

The Court (After further argument): The fact that these people got dividends is no proof that there was false representation made.

Mr. Hobart: I would like to recall Mr. Armour, as he comes from a long distance, and I would avoid calling him back tomorrow.

JOSEPH S. ARMOUR, recalled.

Direct examination by Mr. Hobart.

Q Mr. Armour, did you receive a dividend in the month of March, of this year, or a check which purported to be a dividend of this year? A I think I did.

ALEXANDER W. REID, sworn in behalf of the State.

Direct examination by Mr. Conlon.

Q Mr. Reid, where do you live? A Bayonne.

Q Did you live there in November of last year? A Yes, sir.

Q Did you buy any stock from the Universal Finance Corporation? A Yes, sir.

Q When? A Around the 20th of November.

Q When? A Around the 20th or 23rd of November.

Q Of what year? A 1928.

Q Where did you first hear about this stock? A Over the radio.

Q How long was that before you bought it? A Well, I heard it several times; I don't know exactly how long; I heard it so often.

Q What did you hear over the radio? A I heard the big inducement that they were offering, to pay ten per cent. interest.

Q What did you do after you heard these talks over the radio? A I called up the Financial Investment Company. I called them up from Newark here.

Q You mean you called up to Newark here? Is that what you mean? A Yes.

Q Did anybody come to see you after you made that telephone call? A Yes.

Q Who was it? A Cawthorne.

Q You saw him in Bayonne? A Yes, sir.

Q He came to see you in Bayonne? A Yes, sir.

Q What conversation did you have with him? A I have had my leg amputated on the railroad and I had $5,000 from the insurance company, and I had it in a participating mortgage certificate, in the bank. I told him that I wanted to invest it; that I would not be able to work; that I wanted to get as much as I could out of it; that I could not get it for a year, because it states that right on the certificate.

Q How much interest were you getting on that? A Five per cent.

Q What did he say? A I told him I only had a little money in the bank. He looked at the bank book and saw that I had $1,800 in there, and he said I ought to take out 100 shares. I did not like to do that, because we have got twelve children. He said, anyhow, take 100 shares now and I would never regret it, and I would get ten per cent. on it. So I gave him the bank book and he went up to the bank and drew the money out himself, and sent the bank book back to me a couple of days later, and the next day, I got 100 shares.

Q How much money was taken out of the bank? A $1,500.

Q And you got how many shares? A 100 shares.

Q What happened after that? A About three weeks after, right before Christmas, he called me up and wanted to know if I wanted to make any money. I told him yes, if I heard anything around, a sure thing, so he drove over, and I told him about the certificate, that I could not get it for a year, because it states that right on the certificate. He said, we were all in the banking business and he could figure that out for himself, and he took the certificate, got me and my wife to sign it, and took it away with him. He got it out before the expiration and he was supposed to notify the bank—

Q He said he knew about that? A Yes, he said that we were all in the banking business.

Q That who were in the banking business? A Him and the Bayonne bank and all the rest of them.

Q And you gave him the certificate? A I gave him the certificate, yes.

Q Did you ever get the stock certificate from them? A I did not get it from them, because

that was in November 23rd, and after a while, about a week, I will say, or two weeks, the bank called me up and wanted me to come up and sign off for the transfer. But in the meantime, I had heard of them being closed up, so I told them I would not make the transfer.

Q You changed your mind? A I had changed my mind.

Q But you did buy 100 shares and paid $1,500 for them? A I got that; I got the 100 shares.

Cross examination by Mr. Hobart.

Q Your first subscription was on or about November 20, 1928, wasn't it? A Around that.

Q For which you received a certificate? A Yes, sir.

Q Which you still have? A Yes, sir.

Q And you received a dividend on that, didn't you, on this 100 shares, sometime in the month of March? A Yes.

Q Now, your second subscription, that was the one that was made on or about December 11, wasn't it, 1928? A Around that, I guess.

Q And that is the subscription which you offered to pay for, and did pay for, by means of this certificate from the Bayonne bank, is that right? A I didn't pay for it yet, no; I had it stopped; that is the one I had stopped.

Q You stopped payment on it—stopped the transfer on it? A Yes.

Q That is the one that is in suit now, isn't it, or about to be in suit?

Mr. Conlon: I object.

The Court: Objection sustained.

Q You never received any certificate of stock on that second subscription, did you? A No, sir.

Q The certificate of stock was offered to you, wasn't it? A Yes.

Q And you refused to accept it, wasn't that it? A Yes; but just before—two weeks ago—but I applied for it on the 23rd of December.

Q Yes, but you refused to accept the certificate? A Certainly; I had a lawyer on the case. I sent them to the lawyer.

Q But you refused to accept the stock certificate that was tendered to you a few days ago? A I told them to give it to the lawyer; I had a lawyer on the case.

Q Mr. Markey of Bayonne? A Yes.

Q And he advised you not to accept the certificate?

Mr. Conlon: I object.

Mr. Hobart: I think we ought to have the facts brought out.

Mr. Conlon: I am willing to have the facts brought out.

Q Is it a fact that the stock certificate was offered to you about two weeks ago and that you refused to accept it. Is that a fact? A No, sir.

Q Where is that certificate, then? A Well, the stock certificate was brought to the house—some man brought it to the house and I wasn't home; but he explained to my wife and she said that she would not accept it, and sent them up to the lawyer.

Q Then you never received the stock certificate? A No; it was not received.

Q I would like to show you now the two subscriptions we have been discussing. I show you, first, the one of November 20, 1928. That was signed by you, was it? That is your signature on the face of it, is it? (Showing paper to witness.) A Yes.

Q I now show you the one of December 11, 1928, was that one signed by you? A Yes, sir.

Q And at the time that these subscriptions were signed, copies were left with you, were they? A Yes.

Q Copies of the stock agreement were left with you? A Yes.

Q You still have them, I suppose? A Yes, sir.

At this point the Court adjourned until Tuesday, May 28, 1929, at ten o'clock A. M.

SECOND DAY.

Tuesday, May 28, 1929.

Continued pursuant to adjournment.

Counsel present as before stated.

WILLIAM MacDONALD, sworn in behalf of the State.

Direct examination by Mr. Conlon.

Q Where do you live? A Brooklyn.

Q Do you own any shares of preferred stock of the Universal Finance Corporation? A No.

Q Did you? A Own them?

Q Yes. A No.

Q Did you buy any? A I contracted to buy eighty.

Q When did you make that contract? A About December 3rd.

Q When did you first hear of that stock? A Some time in November, between the 15th and the 20th of November.

Q In what manner did you hear of it? A Through the broadcasting of WAAT, Jersey City.

Q Was there anything said about stock in the broadcasting as you remember? A Yes, sir.

Q What did they say about it? A What?

Q About the stock? A Well, they said that they were earning and paying a 10 per cent. dividend at the present time and would increase to 12 per cent. January 31, 1929.

Q Do you remember anything else they said about it? Was anything said about the price of the stock? A They said the par value of the stock was $10 and it was selling at $15 and would increase $10 by the first of the year.

Q After you heard this broadcasting what did you do, if anything? A Called up the Finance Company and they sent over a representative.

Q Do you know the name of the representative? A Homer G. Angle.

Q Did you give him any money? A $500.

Q How much stock did you subscribe for? A Eighty shares.

Q It cost you $1,200? A $1,200.

Q You gave him $500 on account? A Yes, sir.

Q How was the balance to be paid? A Monthly, $25 a month.

Q Did they tell you the amount in dollars and cents that you were to receive as divi-

dends? A I don't remember whether they did or not.

Q Did you understand from them that you were going to get dividends at the rate of 10 per cent. on $800, or did you understand that you were going to get dividends of 10 per cent. on $1,200?

Mr. Vickers: I object to that question as leading.

The Court: I think it is leading. I will sustain the objection.

Q On what amount did you understand that you were to be paid dividends at the rate of ten per cent?

Mr. Vickers: I object on the further ground that unquestionably the agreement was reduced to writing and the writing of course then is the best evidence and binding.

Mr. Conlon: This is not a civil court.

The Court: Why isn't an agreement between the parties the best evidence unless there is some misrepresentation alleged?

Mr. Conlon: That is the point, your Honor.

The Court: Then, I think you have to lay a foundation if the contract isn't in evidence.

Q Did you understand from what you heard in the broadcasting anything as to the amount upon which this concern would pay dividends at the rate of ten per cent., before you called them up and before you subscribed to the stock?

Mr. Vickers: I object to it as leading and—

A Before I called them up.

Mr. Conlon: Withdraw the question.

Q Before you called the Finance Company on the telephone did you, from the broadcasting that you heard over the radio, come to an understanding in your own mind as to the amount upon which this concern was to pay dividends of ten per cent? A Yes, sir.

Q What was that amount?

Mr. Vickers: That is objected to.

The Court: Does his understanding have any basis of fact on anything that was said?

Q What was said over the radio, as near as you can remember, as to the amount upon which this concern would pay dividends of ten per cent? A Upon the face value of the stock.

Q By face value you mean what?

Mr. Vickers: I object. The representation speaks for itself. The witness says "face value of the stock," and I think there should be some limit to the leading.

The Court: I will permit the question, and overrule the objection.

A What I paid for it.

Cross examination by Mr. Vickers.

Q As a matter of fact the contract was made by your wife, wasn't it? A Jointly.

William MacDonald, re-direct.

Q I show you a subscription contract and I ask you whether that is your wife's signature to the contract? A Yes, that is her signature.

Q Is your signature there? A Surely.

Q Your signature is there? A Yes, sir.

Q Where is it? A There.

Q You signed it on the side? A I was directed to sign it there.

Q And the papers were to be made out in both names? A Yes, sir.

Q Is that the way they were made out? A Yes, sir.

Q When the contract was signed you were present and you read the contract, didn't you? A Yes, sir.

Mr. Vickers: I ask to have this contract marked for identification.

(Same is marked D. 5 for identification.)

Re-direct examination by Mr. Conlon.

Q Do you remember a clause in that contract to this effect, "The company shall not be bound by any representations made outside of the contract? A I didn't quite get that. I didn't understand what you meant.

Q I show you D. 5 for identification. Have you your copy of this paper? A Yes, sir.

Q Let me see the pamphlet you received just prior to Christmas, 1928. A The pamphlet?

Q Yes. A Oh, here it is.

Mr. Conlon: I will withdraw the prior question.

Mr. Vickers: I think it should be stated on the record that there was no such thing as counsel asked the witness.

Mr. Conlon: It is not on the contract D. 5 for identification.

The Court: Very well, that will be noted on the record.

Q I show you a pamphlet headed, "Treasure Chest of Modern Finance." Where did you get that? A It was given to me by Mr. Angle, the representative.

Q Was that given to you before or after you gave him the money on this stock? A That was given before.

Mr. Conlon: I offer in evidence this pamphlet.

Mr. Vickers: No objection.

(The pamphlet is marked Exhibit S. 13.)

FRANK HURLEY, sworn on behalf of the State.

Direct examination by Mr. Conlon.

Q Where do you live? A Brooklyn.

Q Do you know Mr. MacDonald? A Yes, he is my brother-in-law.

Q Did you subscribe to any stock of the Universal Finance Corporation? A Yes.

Q When? A December 4, 1928.

Q When did you first hear of the stock? A About a week prior to that. December 4th.

Q You heard it; how did you hear of it? A Originally, over the radio.

Q How long before you bought it was it that you heard of it over the radio? A A week or two before.

Frank Hurley, cross.

Q Can you tell us what was said about this stock over the radio? A Why, they were offering this stock for sale at $15 a share and they had set a date whereby it would go to $16 a share. I don't recall the date, but what led me to fall for it more than anything else was the statement that it was under the supervision of the Department of Banking & Insurance of the State of New Jersey, and furthermore that the dividends on that stock would be at the rate of ten per cent., and it would be advanced on January 1, 1929, to 12 per cent.

Q What was said about the amount upon which that percentage should be paid? A I was led to believe from radio talks that the percentage would be paid on the amount of the stock for which it was being sold, which was $15 at that time.

Q In other words, that the dividends would be ten per cent. of $15. A Yes, sir.

Q How many shares did you subscribe for? A Fifty shares.

Q How did you pay for them? A Cash.

Q How much? A $750.

Cross examination by Mr. Vickers.

Q I show you a subscription contract, No. 656, and I ask you whether that bears your signature? A That is my signature (indicating), yes.

Q You recognize that as a contract you signed at the time? A I believe it is. I have no reason to believe otherwise.

(Marked D. 6 for identification.)

Q A copy was left with you which you preserved? A I presume I have.

Q If I understand what you mean you presume you have. Don't you know whether you have? A It is possible. I wouldn't say I have it with me.

Q But at that time— A At the time a copy was left with me, yes.

Q You received dividends on them by a check purporting to be for a dividend, did you? A Not until the corporation was reopened again. I received a dividend, I imagine, for three dollars and some cents, in March, 1929.

Q You mean when they reopened after the Chancery proceedings?

Mr. Conlon: I object.

The Court: Sustain the objection.

Q What do you mean, "When the corporation reopened again"?

Mr. Vickers: I object. I think that this inquiry is beyond the time as laid down in the charge by the State. However, I have no objection to this coming out.

The Court: I think the date of the inquisition was the 30th of March, 1929.

Mr. Conlon: That is the date alleged in the indictment. If a crime was committed it was on the 30th of December.

The Court: I will sustain the objection.

Mr. Vickers: Exception.

Defendants' counsel prays an exception to this ruling of the Court.

Exception allowed; let it be signed and sealed, and it is signed and sealed accordingly.

DANIEL J. BRENNAN,
Judge.

Q The check which you received, do you know for what period and as of what time it purported to be a dividend? A No, I couldn't say that I do.

Q Was that the first check you received purporting to be a dividend? A The first check I received was for three dollars and some cents. I don't know what period that was for. I imagine the early part of March.

Q 1929? A Yes, 1929.

Q You paid for your stock in December, 1928, and in March or the early part of March, 1929, you received a dividend or a check purporting to be a dividend? A A check.

Q That is not the one you referred to a moment ago. You have another one? A I got another one later on.

ABNER J. LEVY, sworn in behalf of the State.

Direct examination by Mr. Conlon.

Q Where do you live? A Bronx, New York City.

Q Did you subscribe for any stock of the Universal Finance Corporation? A I did.

Q When did you first hear about that stock? A The latter part of November, 1928.

Q How did you hear about it? A Over the radio.

Q Do you remember what station? A No, sir.

Q What do you remember hearing over the radio about the stock? A Selling shares at $15 and the 1st of January they will be $16 and

dividends of 12 per cent. on the par value, which is $10.

Q What else? A That was, if interested, mail in your name and address and they will send information.

Q Did you mail in your name and address? A Yes, sir.

Q What happened then? A A salesman called at my home.

Q Did someone then see you? A Yes, sir.

Q Who saw you? A Mr. Roat.

Q Where? A At my home.

Q What happened there? A He told me about the investment and it was quite interesting to me and gave me to understand that the certified public accountants were Haskins & Sells, and I am not sure, but I believe he showed me a letter signed by some bank president.

Q Did you know the firm of Haskins & Sells? A I heard about them.

Q What did you hear about them? A They were well-known certified public accountants.

Q Did you subscribe? A Yes, sir.

Q To how many shares? A 17.

Q Did you give them any money? A Yes, sir.

Q How much? A $255.

Q What happened then? A I received a letter about their receiving my check and in a few days I will get a subscription.

Q Then what happened? A I don't quite understand.

Q What happened after that? Did you see anybody else from the company after that? A No, sir.

Q Did you see Mr. Roat again? A Yes, he called at the house again. Here is what it was.

I wanted to take $1,500 and I gave him a deposit of $250 and he said if we asked other people and we were not satisfied we could get our money back without any trouble. We saw someone and they said they didn't think—

Q Don't tell us what anyone else said. A We called up about getting the deposits back and he said no.

Q Who said no? A I didn't know the man over the phone who said no.

Q You were talking to what office? A The office here in Newark.

Q Then what happened? A He called up the house again and we saw we couldn't get the money back and the seventeen shares cost $255 and we gave him an additional $5 to cover seventeen shares.

Q Did they tell you why you could not get your money back? A Well, I don't remember.

Q Mr. Roat talked to you over the telephone, or did he come up to see you? A He came up to my house.

Q What did he say to you? A He said that he did not mean it that way, that we could get our deposit back, and I do not remember anything else. I know we had to go through with it.

Q Did he say anything about the safety of the investment? A Yes, as I remember I think he said it was backed up by banking of the State of New Jersey.

Cross examination by Mr. Vickers.

Q When you say "backed up," you mean under the supervision of the Department of Banking and Insurance? A Yes, sir.

John Thomas, direct.

Q You signed a subscription blank? A I did.

Q Received all the shares of stock? A Yes, sir.

Q And you received a check purporting to be for dividends? A Yes, sir.

JOHN THOMAS, sworn on behalf of the State.

Direct examination by Mr. Conlon.

Q Where do you live? A 41 Rose street, Newark.

Q Where did you live last August? A 56 Pennington street.

Q Did you subscribe for any stock in the Universal Finance Corporation? A Yes, sir.

Q Where did you first hear of that stock? A Through broadcasting.

Q Do you remember what station you heard it over? A I heard it over several stations, WAAT and WABC.

Q What did you hear about it over the radio? A Licensed and bonded to the State of New Jersey and supervised by Banking & Insurance.

Q Anything else? A Only what big per centage they were going to pay.

Q What percentage were they going to pay? A Six per cent., and ten per cent. dividend yearly.

Q After you heard this over the radio what did you do? A I wrote to the Financial Investment Corporation, 605 Broad street.

The Court: You will have to speak louder, Mr. Thomas, if your testimony is going to do any good. Just keep your voice up, please.

Q You say your wrote a letter to the Financial Investment Corporation? A Yes, sir.

Q And what happened then? A Mr. Cawthorne and Mr. Perry called where I was staying at 56 Pennington street.

Q Did you have a talk with them there? A Yes, sir.

Q What did they say about this investment? A They said it was a safely insured investment.

Q What did they say about the price of the stock? A $15 a share.

Q You were to receive what dividend? A Six per cent. and ten per cent. Ten per cent. annually.

Q Do you know what the par value of the stock was? A I didn't go into the details of that. I didn't realize what it was until after I bought it.

Q Did they tell you what the par value was? A I don't remember them telling me.

Q Did they tell you what amount the dividends would pay? A No.

Q How many shares did you subscribe to? A Seventy.

Q How much did you give them? A $1,050 altogether.

Q I show you three envelopes and I ask you if you have seen them before? A Yes, sir.

Q They were delivered to you by the mail? A By mail.

Q They all contained matter of the Financial Investment Corporation and the Universal Finance Corporation? A Yes, sir.

John Thomas, cross.

Mr. Conlon: I offer these three envelopes in evidence.

Mr. Vickers: No objection.

(Same are marked Exhibits S. 14.)

Q Where did you have the money, this $1,050? A Well, I had some home and some in the bank.

Q What bank? A Howard.

Q In the Howard Savings Bank? A Yes, sir.

Q Do you know how much interest you received from the Howard Savings Bank on that money? A No, I do not. I couldn't say.

Cross examination by Mr. Vickers.

Q I show you a subscription contract and I ask you whether you signed that? A Yes, sir.

Q No. 118. I show you No. 117 and I ask you whether you signed that? A Yes, I guess they are all signed.

Q I show you one No. 90, and I ask you whether you signed that? A Yes, sir.

Q I show you one No. 428, and I ask you whether you signed that? A Yes, sir.

Q At the time you signed each of these subscription contracts a duplicate of the subscription was left with you by Mr. Cawthorne and Mr. Perry, or whoever made the deal with you, is that right? A Yes, sir.

Q Do you still have the duplicate? A No, sir, I ain't got that. I have the certificates of the stock.

Q What did you do with the duplicate contracts? A I tore them up after I got the stock certificates.

Mr. Vickers: I ask to have these four subscription blanks marked for identification.

(Same are marked D. 7)

Q With regard to the signing of the subscription contracts, how many of them did you sign here in the City of Newark? A I signed them all.

Q All in Newark? A Yes, sir.

Q You came to the office here, is that right? A Yes, sir.

Q In other words, when Mr. Cawthorne and Mr. Perry called on you you did not then sign any subscription contract, did you? A No, not when they called on me first of all.

Q When Mr. Perry and Mr. Cawthorne called on you at your home you did not then sign a subscription contract, did you? A Oh, yes, I subscribed for the stock right then.

Q Did you sign a contract? A Yes, sir.

Q One of these (indicating)? A Yes, sir.

Q That was in New York City? A No, Newark.

Q Some of these contracts you signed at the office of the Financial Investment Corporation in Newark, didn't you? A Some of them, yes.

Q How many of them? A I think two or three.

Q Did you sign the second, third and fourth subscription contracts after you had received the stock for the first, or before? A Oh, I couldn't swear to that.

Q When you received the stock on these contracts you looked it over and saw that it corre-

sponded with your subscription contract and you burned up the duplicate subscription contracts? A Yes, after I got the—what do you call this?

Q Since that time you have received checks purporting to be dividend checks on these various subscriptions?

Mr. Conlon: That is objected to.

The Court: Objection sustained.

Defendants' counsel prays an exception to this ruling of the Court.

Exception allowed; let it be signed and sealed, and it is signed and sealed accordingly.

DANIEL J. BRENNAN,
Judge.

Q Prior to March 30, 1929, did you receive any checks from the Universal Finance Corporation purporting to be dividend checks?

Mr. Conlon: That is objected to.

The Court: Objection overruled.

Mr. Conlon: The reason for the objection is that I do not want to open a line of inquiry which I do not feel is going to be relevant. This witness testified as to certain representations.

The Court: I will permit it on the theory that the inquisition was made on a certain day. It may be relevant, but I will give the defendant the benefit under the circumstances.

Mr. Conlon: It might become relevant, but it is not relevant now, as far as this witness is concerned. This crime against this witness was committed in the month of September.

The Court: I will let him answer the question.

Q (Question read.) A Yes, sir.
Q And you cashed them? A Yes, sir.

WILLIAM E. HAHNL, sworn in behalf of the State.

Direct examination by Mr. Conlon.

Q Where do you live? A 353 East 91st street, New York City.

Q Did you subscribe to stock of the Universal Finance Corporation? A Yes, the latter part of September, last year.

Q How did you first hear of this stock? A Over the radio.

Q What did you hear about it over the radio? A During the month of September?

Q What did you hear about it? A It was selling six per cent. stock at $15 a share, at present paying ten per cent. dividend.

Q Do you remember anything else that you heard over the radio? A Well, they were saying that it was a good investment and in the near future it was expected to go up higher.

Q After you heard that over the radio, what did you do, if anything? A I wrote a letter to the Financial Investment Corporation.

Q What happened then? A Next, I should say, Mr. Adair came over.

Q Did you have a talk with him? A I did.

Q What did he say about the stock? A He told me the same thing, that it was a good investment, that it was a chance of a lifetime; in other

words he told me that it was the best investment that I could find, the safest investment.

Q How many shares did you subscribe to? A Fifty shares.

Q How much money did you give him at that time? A $450 cash.

Q Where did you have that money? A I had it at home that time. I took it out of the bank prior to that.

Q Why did you take it out of the bank? A To invest it.

Q Invest? A Yes, sir.

Q In what bank did you have it? A Manhattan Savings Institution.

Q How were you to pay for the balance of the stock? A I agreed to pay it monthly, and I made about two payments and a month later I paid the balance in full.

Q Was anything said to you as to the amount upon which this ten per cent. dividend would be paid? A Yes, sir.

Mr. Vickers: Objected to as leading.

Withdraw the objection.

Q Were you told what the par value of the stock was? A I could see it on the contract I signed. Ten dollars.

Q Was anything said to you about as to whether you would get ten per cent. dividend on the par value, that is, $10 or the amount which you were paying for the stock, which was $15?

Mr. Vickers: Objected to as leading.

The Court: Objection sustained.

William E. Hahnl, cross.

Q Tell me all you remember that was said to you either over the radio or by this man that came to your place, about the ten per cent. dividend? A Over the radio I remember it was paying ten per cent. dividend at present and was soon expected to go up higher. Later, after I bought the stock, I was told that the radio stock will go up to twelve per cent. in January or December; I don't know when.

Cross examination by Mr. Vickers.

Q Before the 30th day of March, 1929, did you receive a check purporting to be a ten per cent. dividend check on your stock?

Mr. Conlon: Object.

The Court: I understand the ground of the objection, under ordinary circumstances would be a reasonable basis, but what are dividends, you are as perfectly familiar with, as counsel for the defense.

Mr. Vickers: I will reframe that question to ten per cent.

The Court: I will permit it.

A I can't remember whether it was before March. I know that I got about two checks.

Q You got two checks purporting to be a dividend? A Up to now, yes.

Q What is your business? A Bottler.

Q You read English, don't you? A I do.

Q When you got your check you figured out what it was, about? A Yes.

Q What it was supposed to be? A Yes.

Q And cashed the check? A I certainly did.

Q You were satisfied? A I couldn't say I was disappointed.

Q You couldn't say you were disappointed? A I should say I was disappointed.

Q What disappointed you? A I expected to get ten per cent. on $15 a share.

Q But you read on the face of the stock the par value, didn't you? A Yes, sir.

Q You never had bought any stock before? A No.

Q Did you make any inquiry at all as to what the par value meant? A Not when I bought the stock.

Q You have told us all you recall that was said over the radio and told us all that was represented to you by Mr. Adair, so far as you can remember, is that right? A Mr. Adair was in my house and he was talking it over with me, and my wife came in and she wanted to be sure if it was a safe investment, and he said, he told her that it was the safest investment, and all I could lose was the investment.

Q At the time you heard about it over the radio you understood, did you not, that it was a six per cent. preferred stock? A Yes, sir.

Q You knew what that was? A Yes, sir.

Q Six per cent. was preferred? A Yes.

Q At that time, when you heard this over the radio it had paid a dividend of ten per cent.? A Yes, sir.

Q That is what induced you to buy, is that right? A Yes, sir.

MARTIN H. GLEASON, sworn in behalf of the State.

Direct examination by Mr. Conlon.

Q Where do you live? A Brooklyn. 258 Wyckoff street, Brooklyn.

Q How old are you? A Fifty-two.

Q What is your business? A Working at the celluloid business.

Q Did you subscribe to any stock of the Universal Finance Corporation? A Eighty shares.

Q How did you first hear of this stock? A Over the radio.

Q Do you remember over what station you heard it? A WABC.

Q When was that, about? A About the latter part of November.

Q What did you hear over the radio about the stock? A Well, I heard they were selling the stock and they were going to pay fifteen per cent. on the money invested. I don't know how it was worked, I don't remember that.

Q Do you remember what they said the price of the stock was at that time? A $15.

Q Do you remember what they said it paid? A I don't exactly.

Q What else do you remember hearing over the radio? A I don't remember. I couldn't repeat it. There was so much said that I couldn't remember it.

Q I don't expect that, but the general purport or the general sense of what was said over the radio about the business of this company, the stock they were selling. Was anything said about the business they were in? A Yes, sir.

Q What was said about that? A They said they had quite a successful business and were doing a big business and large returns on their money, or something to that effect.

Q What was the nature of the business, what kind of a business? A They said it was a banking business.

Q Was anything said about the manner in which the money was invested by this concern? A Yes, they said it was a small loan corporation for loaning money out on small loans.

Q Was any percentage mentioned? A Yes, they said they were paying three per cent. for the use of the money.

Q After you heard these radio talks, what did you do? A I wrote a letter to the Universal Finance Corporation asking for more information that they agreed to give out, and I received some information and some pamphlets.

Q Did you write to the Universal Finance Corporation or to the Financial Investment Company? A The Universal Finance Corporation.

Q What happened then? A I received some literature the following day and a general explanation of the business, what it was like.

Q Did you read that literature? A Yes, sir.

Q Then what did you do? A Well, I didn't do anything just then. The agent of the concern called to the house the same evening after I received the papers and the information.

Q He called in the evening? A Yes, sir.

Q Do you remember his name? A Yes. Homer G. Angle.

Q Did you have a conversation with him? A Yes. About pretty near an hour's conversation.

Q What were you talking about? A Well, he tried to induce me to take out some stock, and I told him that I couldn't afford to take a chance, I wanted to know absolutely about the security and he explained to me about the security of the stock.

Q What did he explain? A Well, he said that it was absolutely no chance for me to lose the money, because he said it was taken care of by the Bank Committee or banking institutions and absolutely safe as any bank in the country could be.

Q After you had that talk with Mr. Angle, what did you do? A I subscribed for fifty shares of stock the first time.

Q At the rate of how much? A $15 a share.

Q Did Mr. Angle say anything about dividends you were to get? A Yes, he did. He said that I was to get some dividends each month.

Q At what interest were your dividends? A I was to get twelve per cent. on the money invested.

Q Twelve per cent. on the money invested? A On the money I had given him, yes.

Q You subscribed for fifty shares? A The first time, yes.

Q You gave him that money? A I told him if he would call the next day I would go to the bank and draw the money out of the bank and have it for him.

Q You had money in what bank? A In the Manufacturers Bank of Ridgewood.

Q Was that a check or savings account? A Savings account.

Q Do you know how much interest you were getting there at that bank? A Yes, four per cent.

Q And did he come the next day? A Yes, sir.

Q What did you do the next day? A No, he didn't come the next day. When I saw him he said that it wouldn't be necessary for me to go to the bank, but I could turn the bank book over to him and he would send it to the main office and they would check up and send it back to the bank where my account was and I would receive it through the mail.

Q Was that done? A Yes, sir.

Q You gave him the bank book? A Yes, sir.

Q How much money was taken out of your bank? A Well, on that account he took out for fifty shares, I think it come to $750.

Q You paid for them in cash? A Yes, sir.

Q Did you have any other transactions with him? A After seeing the bank book he said, "You have considerable money left. Why can't you take out some more stock?"

Q How much money did you have in the bank? A About $1,700, within a few cents.

Q Did you have a checking account besides that? A No.

Q That was the only account you had? A Yes. He came again next—

Q Just a minute. Did you tell him how much money you had in the bank before you showed him the book? A I told him approximately, yes.

Q You say he came back? A Then, he came back the next night and we took a long while and he wanted me to take out some more shares. He said that it was absolutely safe and I couldn't lose and he says, "Take out 21 shares." I told him that I was afraid I hadn't ought to do that because I wasn't working at the time I didn't

want to lose it, it was all I had in the world, and I was saving it for a long while and I said, "If I lose it, I will be strapped." He said there wasn't a chance in the world of my losing it, and he explained how he put his money in and money belonging to his relations, his father-in-law and his mother-in-law and everything, which induced me to take the thirty shares by that explanation.

Q Did you pay him that money? A The bank book was then in their care. I didn't receive it back, so then he telephoned to the home office, he sent word, and then they deducted the second amount of $450 from the bank book.

Q That money was taken out of your bank account? A Yes, sir.

Cross examination by Mr. Vickers.

Q In the beginning of your direct testimony you said that in the latter part of November you heard a radio talk over station WABC in which it was said that they were going to pay 15 per cent. on the money invested. Aren't you mistaken about that? Isn't it $15 a share you mean? A I should have said 12 per cent.

Q You said in your testimony 15 per cent.? A Twelve per cent.

Q Twelve per cent. you meant, is that right? A Yes, sir.

Q At that time the stock was selling at $15 a share? A Yes, sir.

Q You understood that the business that was referred to this company was doing, was the small loan business? A Yes, sir.

Q You knew what that meant, didn't you? A Yes, sir.

Q Loaning small amounts at three per cent. per month. You understood that, didn't you? A Yes, sir.

Q You say you wrote to the Universal Finance Corporation? A Yes, sir.

Q Wasn't it the Financial Investment Company, the same people who were broadcasting, who gave their name and address and telephone number in the City of Newark in the broadcast talks? Those are the people to whom you wrote, isn't that right? A Well, I had an idea I wrote to the Universal Finance Corporation, because I felt I did, though I may have been mistaken on it.

Q As a matter of fact you won't say that the name of the Universal Finance Corporation was ever mentioned in the broadcasting, will you? It was the Financial Investment Corporation selling the stock of the company engaged in the small loan business, is that right? A Yes, sir.

Q You received certain literature when you wrote in? A Yes, sir.

Q Two days afterwards the agent called, is that right? A Yes, sir.

Q Between the time when you received the literature and the time the agent called, did you read the literature? A I did.

Q I show you State's Exhibits S. 1, S. 2 and S. 3, and I ask you to look at them and see whether or not you recognize that as the literature or some of it which was sent to you in compliance with your inquiry? A I didn't receive every one.

Q That is S. 1 you did not receive? A I received this one (indicating).

Q You are now pointing to S. 3? A I didn't receive this one (indicating).

Q You are referring to S. 2. When you read this description, "Par value $10 per share. Six per cent. participating preferred stock, now paying ten per cent. annual dividends," you understood what that meant, didn't you?

Mr. Conlon: I object to asking the witness what he understood it meant.

The Court: I will permit it.

A Part of it I didn't understand and part I did. Mr. Angle explained parts of it when he came to the house.

Q Tell the Court and jury what portion where the descriptive language is used, "Par value $10 per share, six per cent. participating preferred stock," if you understood that? A Participating preferred stock. Then Mr. Angle told me what it meant.

Q You understood the term "par value $10 a share"? A Yes, sir.

Q You understood what six per cent. meant? A Yes, sir.

Q You understood what preferred stock meant? A Yes, sir.

Q You understood what the ten per cent. annual dividends were? A Yes, sir.

Q Tell us what you asked Mr. Angle to explain to you and what he said regarding that word "participating"? A I told him I wasn't exactly clear about the word "participating." It was something I didn't understand and he explained it.

Q Did Mr. Angle tell you the ten per cent. alleged to have been paid on the stock, how it was made up, how much preferred stock participated? A Did he tell me? He tried to tell me but I couldn't understand it. I told him I

couldn't see where he could pay that ten per cent. and in order to explain it—but there was so much to the conversation it is pretty hard to remember.

Q Since that time and before the 30th day of March, 1929, did you receive checks from the Universal Finance Corporation purporting to be dividends on your shares of stock? A I did.

Q How many? A I received two.

Q Did you cash them? A The first check was $5.85.

Q Did you cash them? A I kept it about three weeks. I didn't know whether to cash it, or I didn't feel I ought to cash it.

Q You did eventually cash it? A Yes, sir.

Q When the second one came— A The second check was $24, and I cashed that about two weeks after I received that.

Q I show you subscription contract No. 602 and 671 and I ask you whether they bear your signature? A They do.

Q One was signed December 1st and the other on December 5th, is that right? A Yes, sir.

Q Before you signed these papers, did you read them? A Surely.

Q Then, Mr. Angle signed them and gave you a duplicate. That is his signature on there, is that right? A He did.

Mr. Vickers: I ask to have these two contracts marked for identification.

(Same are marked D. 8 for identification.)

Q When Mr. Angle spoke to you or when you heard the radio talk you say it was represented to you that this was a banking business? A He did.

Q Was the particular kind of banking business described in any way? A Well, I took it from his description, the illustration of it, that it was like any ordinary banking business, but not the amount of capital invested.

Q Isn't it a matter of fact that the radio talks and Mr. Angle's talk distinguished between the ordinary kind of banking business and this which was called industrial banking? Isn't that right? Wasn't it called industrial banking? A I don't remember how he put it except to tell me that the head man of this business was higher than the man in the bank where I had my money. He said a man in this organization was higher up than a man in the bank where I had my money, the Manufacturers Trust Company, because he said they supervised all the other banks.

Q When the power was spoken of, wasn't it referred to as earning power, because of the greater earning power of the money that was loaned out, or money which went into this company loaned out in the small loan business had a greater power than the money in the bank, only they did not have so much capital?

Mr. Conlon: That is objected to as not cross examination.

A I do not think so.

The Court: I will let the answer stand. He said he doesn't think so.

Q What was said about the earning power of this money through the character of the business that was being done? A He said they were doing a large business and earning big money and if it wasn't for that fact he wouldn't have

risked all the money he possessed and his father and mother-in-law possessed, that is the reason he put it in, because they were doing a big business and absolutely secure.

Q Didn't he tell you that it was a small loan business and they were enabled under the law of New Jersey to charge three per cent. Isn't that a fact that is what he told you? A He said they were doing a small loan business, but intended to expand to a larger business.

Q Yes, in fact he told you that they were contemplating the expansion of the business by branch industrial banks, isn't that so, in other cities? A No, he didn't mention any other branch banks in any other city.

Q You understood, did you not, when he told you that the money was put in by these subscribers to be loaned out on small loans at three per cent., that that was more interest than the ordinary bank in the ordinary banking business was entitled to charge. You knew that, didn't you? A Yes, he explained that.

Q You knew it yourself, didn't you? A No.

Q Didn't you know that the ordinary bank could only charge by way of interest, six per cent.? A Yes, sir.

Q That is the distinction he made, that they under the law, could charge three per cent. a month, whereas a bank as far as interest was concerned was confined to six per cent. That is what Mr. Angle told you and that is what the radio talks were? A That is part of it, yes.

Re-direct examination by Mr. Conlon.

Q In answer to one of Colonel Vickers' questions, you said that you understood what was

said over the radio and what was said in the literature about this ten per cent. dividend. Tell us what you did understand about that? A Will you put that question again?

Q You told Colonel Vickers that you understood what was said over the radio about this ten per cent. dividend. What did you understand about the dividend as to the amount you were to receive and when you were to receive it? A Well, I understood that I was to receive twelve per cent. altogether, but I did not know exactly how I was to receive it, except periodically, quarterly, or something like that.

Q You understood that you were to receive twelve per cent. on how much money? A On the amount of money that I had in the business.

Q The amount of money you subscribed? A Yes, sir.

GEORGE GOETZ, sworn in behalf of the State.

Direct examination by Mr. Conlon.

Q Where do you live? A Staten Island. West New Brighton, Staten Island.

Q What is your business? A Boilermaker.

Q Did you subscribe to any stock of the Universal Finance Corporation? A Yes, sir.

Q Where did you first hear of that stock? A WDCP, radio.

Q When was that? A November 5th, on a Sunday night.

Q What did you hear about the stock over the radio? A I just got on the tail end of it on the radio that it was a good investment at ten per cent.

Q Was that the only time you heard it broadcast? A I heard it the Sunday before that, around half-past ten or eleven o'clock.

Q After you heard that broadcast, what did you do? A I had my wife drop a line to WDCP, I couldn't get the address, Jimmie Sheridan.

Q Jimmie Shearer? A He gave us full details and on Wednesday night a gentleman came to the house and we went to sit in the dining room so he could talk, and he brought out a lot of papers, you know.

Q Information about this? A Yes, sir.

Q What did he tell you about it? A He just said that it was a good investment for poor people.

Q Did he tell you what kind of a business they were doing? A He said they were working the same as the Morris Plan, starting off small, and gradually working until they got banks all over the busy sections. He was thinking about when they got enough money that they were going to build a bank at New Brunswick.

Q Did he tell you the price of this stock? A $15.

Q $15 a share? A Yes, sir.

Q Did he tell you what the dividends were? A Ten per cent.

Q Did he tell you anything about the future of the company? A No, he just gave me a lot—a picture of the bank on Market street, corner of Market and Broad, and he says that is their bank.

Q I show you a pamphlet, Exhibit S. 1—is that the picture you mean? A Yes, sir.

George Goetz, direct.

Q What did he say about that picture? A He says that is the busiest section in Newark, and he says, "That is our bank" (indicating).

Q Did he tell you what part of that building that bank occupied? A I saw it on the top there.

Q What?

Mr. Conlon: The witness points to the top floor of the building.

Q This man showed you the picture and what did he say about that picture? A He just says that was their bank.

By the Court.

Q What was their bank? A That is a picture of their bank.

The Court: Indicating the picture on Exhibit S. 1.

By Mr. Conlon.

Q You pointed before to a window, I believe, on the third floor? A Yes, sir.

Q When you point to that, what do you mean? A I thought it was pretty nice, you know.

Q What was on the window that you pointed to? A I seen Finance, and that is all I looked.

Q Can you see what is on there, what does it say? A I can't say that.

Q Mr. Goetz, can you read what is on that window there? A I see corporation, that's all.

Mr. Vickers: I don't think the jurors can hear that.

The Court: "I see corporation, that's all." That is what he said in response.

Q Mr. Goetz, can you tell me anything else that this gentleman said about this picture? A Oh, I remember he said that it is their bank and there is no need of my being afraid it will go under.

Q Did he say anything about what part of the building this bank occupied? A No. He just said that is the busiest corner in Newark.

Q And he said that that was the bank? A It is one of his banks, that is what he said.

Q Now, what was said about the dividend that you were to receive? A Ten per cent.

Q Was anything said about when you should receive that?

The Court: Was anything said, Mr. Goetz, about the amount of money that you were to receive the ten per cent. dividend on?

The Witness: No, sir.

Q And you subscribed to how many shares? A Thirty shares.

Q How much money did you give him? A $60 cash and $90 money order.

Q I show you a paper, did you ever see that before? A Yes, sir.

Q When is the first time you saw that, about? A I remember getting one when I came over here.

The Court: Do you remember when it was, or about when—

Mr. Conlon: Let me ask you this, do you remember coming over here?

The Witness: The day before New Year's, the last of the year.

The Court: December 31st?

The Witness: Yes, sir.

George Goetz, cross.

Q And when you say here, you mean the Prosecutor's office, don't you, isn't that what you mean? A Yes, sir.

Q And how long before that was it that you received this paper? A That I cannot tell you.

Q Did you ever see a paper like this? A Yes, I have one in my pocket.

Q Will you let me have it, please?

Mr. Vickers: For the purpose of the record, the witness being shown the treasure chest, Exhibit 13.

Q Do you remember when you received this check? A No, sir.

Q Have you got any other signature paper there that you received from these people? Look through there and find it. This came from where, which I am now showing you? A That one?

Q Yes, how did you get it? A I think it was pinned on my—the last time I was here on December 31st, you picked this letter up—

Q Took it from you? A Yes, and pinned it on.

Q Pinned it on to your statement? A Yes, sir.

Q But I want to know where you got it? A I got it through the mails.

Mr. Conlon: I offer the same in evidence.

(The same is received and marked Exhibit S. 15 of this date.)

Cross examination by Mr. Vickers.

Q Mr. Witness, when the agent showed you this circular and told you this was one of the

busiest corners in Newark, did you know where, in fact, the corner of Market and Broad streets were? A No, sir, I never was in Jersey.

The Court: You never were in New Jersey before?

The Witness: No, not before I started that, I lived in Jamesburg, New Jersey, but not this time, near Freehold, but I never was on this side.

Q Now, you said something when the Prosecutor showed you this exhibit, and you pointed to the upper floor here of this building shown on this exhibit and you said that he was pretty honest, that you thought he was pretty honest. A From the way he spoke.

Q Because you could tell that down below here was the United Cigar stores, and you knew that, didn't you? A Yes, sir.

Q And the agent pointed out the particular part of the building which they occupied as a bank and showed you it was up here? A No, he did not show it, but he threw it on the table and said, "This is one of our banks, one of the busiest corners in Newark."

Q Did he point out to you "Universal Finance Corporation," on the window along the upper floor there? A No, sir.

Q And looking at the picture you saw that the lower floor of this building was occupied by the United Cigar store? A Yes, sir.

Q And this agent told you that they either had or were establishing a branch business in the City of New Brunswick, is that right? A Yes, sir.

Q And this piece of literature, did you receive that after you had subscribed for your stock? A Yes, sir.

Q They were sort of making you feel good about it because you had bought it, but they made you feel good—

Mr. Conlon: This was just a Merry Christmas greeting.

Mr. Vickers: Yes, with the Christmas greetings on it.

Q And this dividend notice, you received that, of course, after that, after you had closed your transaction and paid for your stock? A Yes.

Q And that made you feel good? A Yes, sir.

Q And you got a check, didn't you? A I never got no dividend.

Q You paid up your stock? A No, I was supposed to pay $15 a month.

Q I see, you haven't fully paid for your stock yet. A After I came over here and found out that it was not any good, I did not bother no more with them.

Q You mean after the Prosecutor's office got a hold of you you got scared, is that right? That is what makes you frightened on the witness stand, isn't it? A (No answer.)

Q I show you a subscription contract and ask you whether this is your subscription contract, Mr. Goetz? A Yes, sir.

Q Is that your signature there? A Yes, sir.

Q You have a copy like that, haven't you? A Yes, sir, in here.

Q And your copy is signed by Mr. Field, the agent who came to talk to you, is that right? A Yes, sir.

Q And then you paid $60— A (Interrupting) And $90 in money order.

Q You paid $150 all told which was credited on your copy, on here? A This is my receipt for the money.

Mr. Vickers: I ask that this be marked for identification.

(The same is marked D. 9 for identification.)

Q In your direct examination, Mr. Goetz, you said that Mr. Field told you that the nature of their business was something like the Morris Plan, starting on a small scale and working up, working up a chain of these banks, is that right? A Yes, sir.

Q You knew something about the Morris Plan, didn't you? A I never knew nothing about it.

Q You did not know anything about it, but you remembered the name, and then you said, in answer to the Prosecutor's question, that you knew about the price of this stock that it was $10.15? Is that your testimony? Now, tell the jury what you mean by that? A What do you mean, $10.15?

Q I don't know, you said it in your testimony, $10.15, and I want you to explain that to the jury.

Mr. Conlon: I don't remember that.

Mr. Vickers: Now, I made a note of that, and if there is any doubt about it, I will refer to the record.

George R. Tennant, direct.

Re-direct examination by Mr. Conlon.

Q Did the Prosecutor's office send for you, or how did you come to the Prosecutor's office? A I came.

Q What for? A I seen the ad in a newspaper, in the News, and I thought that I would come over to see if I could get some of my money back.

Q You received no word from the Prosecutor's office before you came here? A No.

Q Out of the various papers which you gave me I took this. Did you receive that? A Yes, sir.

Mr. Conlon: I offer this paper in evidence.

(Same is marked Exhibit S. 16.)

Re-cross examination by Mr. Vickers.

Q Did you get that paper after you bought your stock? A Yes, sir.

GEORGE R. TENNANT, sworn on behalf of the State:

Direct examination by Mr. Conlon.

Q Where do you live? A 77 Boyd avenue.

Q Newark? A Newark.

Q How old are you? A I am how old?

Q Yes. A 62.

Q What is your business? A Retired at the present time.

Q Did you invest in any stock of the Universal Finance Corporation? A Yes, sir, twenty shares.

Q How did you first hear about that stock? A I heard it through the radio. I don't know what station.

Q When did you hear it over the radio? A Probably a half a dozen times off and on.

Q What did you hear said about it over the radio that you remember? A The thing that impressed me most over the radio was that it was under the supervision of Banking and whatever it was, of the State of New Jersey, which I knew that was the thing that impressed me most, and that it was paying ten per cent, at that time, but on the first of the year it would be increased to 12, and that would be eight per cent on the par value.

Q How is it that would be ten per cent. on the par value? A I don't know of any stock was paid on the par value.

Q Was that explained, or did you understand that? A Well, I understand it.

Q After you heard the broadcasting on the radio what did you do? A Why, I was coming up Broad street and I just happened to see their sign out, and I walked up and I met Mr. Cawthorne, something like that. Here is the name (indicating).

Q Mr. Cawthorne you met? A Yes, sir.

Q Did you have a conversation with him? A A half-hour's conversation.

Q What did he tell you about the company? A He told me that it was making money and had good prospects and in a short time, I think a few days after that, probably the 15th of December, that it would be increased to $16 a share.

George R. Tennant, cross.

Q What did you do as a result of that conversation? A I didn't have a check with me, and I was rather impressed with the man's personality—that goes a good ways in salesmanship—and finally I signed a blank check which he produced rather readily. I signed it because I didn't have one of my own with me.

Q You signed a check for how much? A $300.

Q That paid for your stock in full? A That paid for my stock in full.

Cross examination by Mr. Vickers.

Q Is this the gentleman with the nice personality, (indicating)? A Yes, sir.

Q Now, let us look at the contract, No. 606. At that time you paid $300? A $300.

Q Thereafter and before the 30th day of March, 1929, did you get a check purporting— A I received a check the early part of March for $1.47 which was up until the first of the year and from then on I received another one probably three or four weeks later for six dollars, twelve per cent on the par value of the stock.

Mr. Vickers: I ask to have this check marked for identification.

(Same is marked D. 10 for identification.)

Q When the statement was made, as you say, that this business was under the supervision of the Department of Banking & Insurance, was that made over the radio or by Mr. Cawthorne? A Made over the radio.

Q At that time it was represented, was it not, that the company whose shares of preferred

stock were being offered, was in the small loan business? A The small loan business.

Q You knew what that meant? A Yes, loans of $300 at 36 per cent a year.

Q Under the laws of the State? A Yes, sir.

Q As a matter of fact it was stated in the radio talks that that was under the laws of the State of New Jersey? A Yes, under the supervision of the State of New Jersey.

Q And under the supervision of the Department of Banking & Insurance of the State of New Jersey? A That's the idea.

Q And bonded to the State of New Jersey? A Yes, sir.

Q You took that as being a true statement, and you made your purchase? A That is exactly it.

PHILOMENA SQUIRTIERL, sworn in behalf of the State:

Direct examination by Mr. Conlon.

Q Where do you live? A Brooklyn.

Q Did you buy any stocks or subscribe to any stock of the Universal Finance Corporation? A Financial Investment Company, yes.

Q Do you know the name of the stock you bought? A Preferred stock.

Q Was that stock of the Universal Finance Corporation or the Financial Investment Company? A Financial Investment Company.

Q Are you sure about that? A Yes, sir.

Mr. Vickers: It is stipulated that the witness is in error, by consent of counsel.

Q Where did you first hear of this stock?

The Court: There was no public offering of the stock of the selling corporation?

Mr. Vickers: No.

A Over the radio.

Q When did you hear it? A Last December.

Q What did you hear about it? A About there was a good investment giving ten per cent. dividends and it was supposed to be raised to twelve on the 1st of January.

Q What did you do after you heard the radio talk? A I wrote to the company.

Q You wrote to the company? A Yes, sir.

Q What happened then? A Mr. Angle called at our home.

Q You had a conversation with him? A Yes, sir.

Q Did he tell you anything about the company? A Yes, he told us about the business, that it was a small loan business and it was a very good investment, he said, without any fear of ever losing any money. He said the price always goes up and never goes down.

Q After you had that talk with him, what did you do? A We made a subscription.

Q You subscribed for how many shares? A One hundred.

Q How much on account? A $500.

Q How was the balance to be paid? A Something about $40 monthly.

Q Where did you have that $500 at the time you paid the deposit? A In the bank.

Q What bank? A Hamburg Savings Bank.

Q Was anything said to you about the amount of dividends you would receive? A The divi-

dends was to be ten per cent. I don't know just exactly how they were to be paid.

Q Ten per cent. on what? A On the par value.

Q What was the par value? A $10.

Q Was anything said to you about how much dividends you would get on the money you invested? A Well, I guess it was someting like the profit was supposed to be divided between the stockholders.

Q Was there any explanation made to you either over the radio or by this man who called to see you as to how much income, how much percentage you would get on the money you put it the company? A Ten per cent. interest is what I just remember of after the stock was paid out, and then there was four per cent. on the money that you had paid in before the stock was paid out.

Q As I understand it, on the $500 you paid you were to get four per cent. interest until you paid for your stock? A Yes, sir.

Q I am speaking of after your stock is paid and after you paid $1,500 into the company, was anything explained to you either over the radio or by this man as to what percentage you could get on that money? A Just ten per cent. dividend. I don't remember all just now.

Q That is all you remember? A Yes, sir.

(Cross examination waived by defendants' counsel.)

ANNA RABINOWITZ, sworn on behalf of the State.

Direct examination by Mr. Conlon.

Q Where do you live? A Coney Island.

Q Did you subscribe for any stock in the Universal Finance Corporation? A I did.

Q Where and when did you first hear about this stock? A Over the radio.

Q When? A The early part of December.

Q Do you remember what station? A WABC.

Q What did you hear about it? A Good investment, $15 a share, paying twelve per cent. interest yearly. It was under the Banking Department. That's all.

Q After you heard this talk over the radio, what did you do? A I called up the company and they sent a representative the following evening.

Q Did you talk to the representative? A I did.

Q Did you subscribe to any stock? A I was skeptical about it, but did subscribe after speaking two and a half hours with the man. He said the stock would be worth more and I had nothing to worry about because I couldn't afford to invest much, and he did tell me that it was perfectly safe, and I subscribed to 40 shares.

Q How much money did you give him? A $600.

Q Did you give him that in cash? A Yes, I gave him a note with my bank book, and he went down and got it.

Q You had that where? A Dry Dock Savings.

Q You were getting how much interest on your money? A Four and a half per cent.

Q Were you told either over the radio or by the man who came to your house anything about interest? A He told me that I would get twelve per cent. on the amount I paid in.

Q Was that the reason you took the money out of the bank when it was making four and a half per cent.? A Yes, sir.

Cross examination by Mr. Vickers.

Q Do you read English? A Yes, sir.

Q How long have you been in this country? A Born here.

Q You testified that you subscribed for 60 shares. I show you a contract subscription, and I ask you whether that is your signature attached to it? A Yes, sir.

Q Is that your husband's? A Yes, sir.

Q Whose is it, yours or your husband's? A Both.

Q Do you keep the signature in the family name? A Yes, sir.

Q Tell us who signed it or wrote it? A You mean the signature?

Q Yes, who wrote "Samuel L. Rabinowitz"? A That is my husband's signature.

Q He understands English, does he? A I believe so.

Q You told him at that time that this stock had paid on the basis of a ten per cent. dividend? A Yes, the year previous he said.

Q This contract signed by your husband and this conversation you say took place about the 13th day of December, 1928, didn't it? A Yes, sir.

Q You say the agent told you that in the previous year the stock had paid ten per cent., is that right? A Yes, sir.

Q By that did you understand it was in 1927? A That's it. In 1928 and 1929 they were going to pay twelve per cent.

Q He didn't say that they were paying twelve per cent. then? A No, he said beginning 1929.

Q The price of the stock quoted to you was $15 a share? A Yes, sir.

Q Since that time and before the 30th day of March, 1929, you received some checks purporting to be dividend checks from this stock, didn't you? A Yes, sir.

Q Did you cash them? A Yes, one for $1.85 and one for $12.

Q Quarterly dividends? A Yes, sir.

Q Did you get any literature from the agent? A No.

Q Did you get a certificate of stock? A Yes, I have it here.

Q Have you it? A Yes, sir.

Q With you? A Yes, sir.

Q Did you read it? A Yes, sir.

Q You show me a letter, but have you the certificate of stock with you? A That's what I meant.

Q The stock certificate you bought—you bought it, didn't you? A They just sent that to me last month.

Q I don't mean the check, I mean the certificate itself? A That's all they sent me.

Q You are advised in this letter of December 14th acknowledging your contract—

Mr. Conlon: I object to this as not cross examination.

The Court: Sustain the objection.

Mr. Conlon: If he wants to put it in and make it the defendants' exhibit I am satisfied.

Q Did you ever receive from the Market National Bank of New Jersey your certificate of stock? A You mean the bond?

Q Yes. A I got that last month. They gave it to me for $400 instead of $600.

Q You haven't brought it with you, have you? A No.

Q Was it for forty shares of stock? A Yes, sir.

Q Par value $400? A Yes, I explained that to Mr. Singer when I bought it. He said it made no difference, I was going to get in on $600.

Q Mr. Singer was the agent? A Yes, sir.

Mr. Conlon: May I see that?

Mr. Vickers: I suppose, if counsel reads that he would like to question on it.

Mr. Conlon: Yes, that's exactly what I intend to do.

Mr. Vickers: I think that is very unfair to these defendants.

The Court: Counsel has the same privileges as you, Colonel Vickers. You speculated.

Mr. Vickers: No, your Honor ruled that I could use it if I wanted to make it part of the defendants' exhibits, and at this stage of the game I cannot do that, and for that reason I thought that this subject matter was open to cross examination, and this letter, which this witness produces I thought was a

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legitimate matter of inquiry in this transaction.

The Court: I do not think so.

Mr. Vickers: Your Honor has ruled—

Mr. Conlon: I object to the attempt to use it unless you put it in evidence.

Mr. Vickers: I cannot put it in.

Mr. Conlon: I do not think it has any relevancy and therefore I will not offer it.

HELEN PEARSALL, sworn on behalf of the State:

Direct examination by Mr. Conlon.

Q Where do you live? A Brooklyn.

Q Did you subscribe to any stock in the Universal Finance Corporation? A Yes, sir.

Q Where did you first hear of that stock? A Over the radio.

Q When was that? A In the early part of October.

Q Do you remember what station you heard it over? A If I remember right it was WABC

Q Tell us what you remember hearing about this stock over the radio? A Well, they said it was paying ten per cent and it was under the banking and insurance laws of New Jersey.

Q Anything else you remember? A Not anything I can remember.

Q After you heard these talks over the radio what did you do? A Wrote for a circular.

Q What happened then? A They sent me one.

Q What else did they send you? A Then, a representative called around a couple of times afterwards.

Q You had a talk with this representative? A Yes, sir.

Q He told you something about the company? A Yes, sir.

Q What did he tell you? A He told me it was a gilt-edge investment and could not go under under any consideration, for 99 per cent. are successful.

Q 99 per cent. of what? A All the companies. Where other investments would fail they were solid.

Q When he said 99 per cent. of the companies were successful, what did he mean? A He meant in this line of business.

Q You subscribed to some stock? A Yes, to twenty shares in October and ten in December.

Q How much did you pay on account? A On the twenty shares $100.

Q Was anything said about what dividends were to be paid on the shares? A Yes, ten per cent during that year. After January I was to get twelve per cent.

Q Was anything said about the amount that you would get, ten, twelve per cent., on? A Yes, they made me understand it was $12 on the hundred.

Q You subscribed to how many shares? A Twenty shares first.

Q That was $300? A Yes.

Q What did you understand that you were to get in dividends? A I understood that I was going to get for three months at the rate of 12 per cent.

Q On how much money? A On $300.

Helen Pearsall, cross.

Q I show you a slip. Did you receive that from this company? A Yes.

Q Do you remember when you received that? A I think around the holidays.

Q You mean the Christmas holidays? A Yes, sir.

Mr. Conlon: I offer this slip in evidence.

(Same is marked Exhibit S. 17.)

Cross examination by Mr. Vickers.

Q I show you two subscription contracts, one under the date of October 15, 1928, and I ask you whether that is your signature? A Yes, that is mine.

Q Another one under date of December 12, 1928, and I ask you whether that is your signature? A Yes, sir.

Q At that time did you receive a duplicate of this contract for yourself? A Yes, sir.

Q You read it? A Yes, sir.

Q You read this before you signed it? A No, I did not read it before I signed it.

Q Didn't you? A No. I read it after I signed it.

Q You mean you read the one of October 5th after you signed it? A Yes, sir.

Q How long after you signed the contract did you read it? A I signed the contract and paid the money in the afternoon and I read it in the evening. I didn't have the contract until the agent called.

Q When he called he brought the contract with him? A Yes, sir.

Q He filled out the contract and you signed it? And he signed it? A Yes, sir.

Q That evening you read it? A Yes, sir.

Q Two months later you signed a second one, is that right? A Yes, sir.

Mr. Vickers: I ask to have these two subscription contracts marked for identification.

(Same are marked D. 11.)

Q On your direct examination you said something about hearing over the radio that this company whose stock was being offered was under the banking and insurance laws of New Jersey? A Yes, I understood that.

Q Is that the exact language which was used or is that the nearest you can remember? A That is the nearest I can remember. They said it was under the supervision of the Banking & Insurance of the State of New Jersey.

Q At that time did you learn that the company was engaged in the small loan business? A Yes. That is what it was told to me.

Q The small loan business? A The small loan business, yes.

Q You were then told that the business was under the supervision of the Department of Banking & Insurance of the State of New Jersey, is that right? A That's right.

Q So, that portion of the business was bonded to the State of New Jersey, is that right? A Yes.

Q Was anything said at that time that that part of the business, that is to say, the small loan business, was licensed to do business in the State of New Jersey? Do you recall? A Well, now, I don't quite remember.

Q As near as you can, give the exact language which was used when you say that represen-

tations were made with regard to the dividend or percentage. A Well, they said it was paying ten per cent. on the money and after January it would be paying twelve per cent. and of course I thought that was twelve per cent. on a hundred, that's the way it was represented to me.

Q Now, you say you thought that was the way it was represented. Now, at that time were you told that this was a six per cent. preferred cumulative stock and that it had a participating interest? Do you remember that? A I do remember something about that, but I don't know it to be sure. I know the agent represented the payment as ten per cent. and a gilt-edge security, and I could make no mistake about buying it.

Q I think you said something the agent said about ninety-nine per cent. of the other business might fail and this would not? A Yes, ninety-nine per cent. of that business was a success where other business would make a failure.

Q You understood at the time that moneys which were derived from the sale of this stock were loaned out from small loans and that the return was three per cent. a month on amounts not exceeding $300; that is right? A Yes, that's right.

Q And that was according to the laws of the State of New Jersey? A Yes, that is as I understood it.

Q At the time you were also told, were you not, that the amount that you paid in on deposit, up to the time you made your final payment and became a stockholder, would draw dividends at the rate of four per cent? A Yes, we were told that, and I was also told that in January I would receive my ten per cent. dividends on what I paid in October and I didn't get it, so I wrote to the business about it and got it after that.

Q You mean that you were told in January you would receive a dividend of twelve per cent?

The Court: He said ten per cent.

Q For what you paid in October? A Yes, that is what the agent said.

Q Whether you paid up your stock or not? A This is what he said, "Mrs. Pearsall, you are just in time to be too late for the October dividend, but you will be in time for the January dividend."

Q That was when? A That was in October.

Q Didn't you understand that that was providing the balance was paid up and you received your certificate? A I did after I heard from the corporation, but I thought of course he meant that what we would have in in October we would get dividends on in January.

Q Whether you were a stockholder or not? A Yes, he knew I was going to pay $10 a month on twenty shares.

Q Didn't you understand that you were going to get four per cent. on the deposits of your money until such time as you had paid up the total amount of the subscription? A Yes, I did one way, but I thought it was so straightforward I said to my sister, "I guess the man is right and we don't understand it, because I know I wasn't wrong when he said that."

Q That is to say that you did not think you were going to get four per cent. on the money on deposit and in addition thereto get ten per cent. dividend on the stock which you did not hold? A No, I meant on what I paid in.

Q You paid in a deposit? A Yes, $100 deposit. That is what he made me understand, I would get a dividend on. If it wasn't a real live

business I didn't want to have anything to do with it; it wasn't the interest.

Q You never have become a shareholder or stockholder, have you? A No.

Q You are still carrying on your contracts, that is a fact? A I am still carrying on my contracts and since I signed the application I paid in $45, because I wanted to save the money I had in, and I had to pay it or lose $150, that is what Mr. Edwards told me when I went there a month ago.

Q You are carrying on these payments just exactly as they were set down in the written contract? A Yes, only I paid a little in advance. I didn't pay anything from a time in January until a month ago and then I paid $15 on my shares. I told Mr. Edwards that I would like a statement and I asked him if I couldn't get dividends on the money I paid in without paying anything further as I didn't want to lose it and he said "Pay up your contract and you will get your dividends, so it will go out on the market and you can sell your bond and get your money back." So, I decided rather than to lose the $150 out of $175 I would pay my shares.

Q Didn't Mr. Edwards explain to you at that time that it was four per cent. on the amount on deposit? A Yes.

Mr. Conlon: I object. This is some arrangement that was made later on.

The Court: I will let it stand.

Q At the time you had this money in a savings account? A Part of it I had and part I had in the house, and the rest I took out of the bank.

Q Out of a checking account? A No, I got the cash.

Q You got it from a savings account? A Savings account.

Q And part of it you got out of a checking account? A No. Some I had in cash in the house and part I went to get at the savings account.

Q Where is that? A Brevoort Bank, in Brooklyn.

Q At four per cent? A Four and a half per cent.

Re-direct examination by Mr. Conlon.

Q You told Colonel Vickers that you understood this business was carrying on a small loan business? A Yes, I did.

Q Did you understand that they were speculating in the stock market?

Mr. Vickers: That is objected to as being an unwarranted assumption of fact.

The Court: What is there in the record so far to prove that?

I will sustain the objection.

Q You say that you were getting four and a half per cent. in the bank? A Yes, sir, four and a half per cent.

Q Either over the radio or in the personal talks with you or in the literature, did anyone indicate to you how much net return you would get on the money? A I don't know what you mean by "net." I know he said ten per cent. after it was paid up. I don't know what you mean by "net."

John Gelbrich, direct.

JOHN GELLRICH, sworn in behalf of the State.

Direct examination by Mr. Conlon.

Q Where do you live? A Brooklyn.

Q How old are you? A Eighteen.

Q Did you subscribe to any stock in the Universal Finance Corporation? A Not when it was under the Universal.

Q What name was it when you subscribed? A Public Service Sales Company.

Q Where did you first hear about this stock? A Over the radio.

Q What did you hear about the stock over the radio? Did you hear my question? A I heard it. I am trying to think. That for further particulars you sent to the Public Service Sales Company, but before that he said that it was under the State Banking Laws of the State of New Jersey, and declaring a six per cent. dividend.

Q What was the price of the stock? A At the time I bought it?

Q Yes. A $14.

Q What did you do after you heard the talk over the radio? A I sent a letter to the Public Service Sales Company.

Q What happened then? A A Mr. DuBarry called me on the phone.

Q Did he come to see you? A He came to see me at the office, right.

Q Did you have a talk with him? A I had a talk with Mr. DuBarry.

Q Did you subscribe for any stock? A I did subscribe.

Q How much? A Ten shares.

Q How much did you pay? A $40.

Q You were to pay the rest how? A In monthly installments of $10 each.

Q I show you some papers. Did you see those papers before? A Yes, sir.

Q You received those how? A Through the mail.

Mr. Conlon: I offer the papers in evidence.

Mr. Vickers: I object to them on the ground they cannot possibly be relevant or material, as appears on the face, to the subscription contract of this witness. It appears that on their face they cannot be material, from the testimony already given.

The Court: Let me see them.

Mr. Conlon: They are part of literature sent out and identified by this witness as literature received by him.

The Court: What makes you think, Colonel Vickers, that they are not material to the issue here?

Mr. Vickers: So far as this witness is concerned they are not material or relevant, because this witness dealt with the Public Service Sales Company and that is talking of a date prior to the date involved here.

The Court: That is true, but this is literature leading up to the sale to him.

Mr. Vickers: No. That is our point exactly. His sale was concluded and this is something sent to him afterwards.

Mr. Conlon: That is true. His sale was completed in May, 1928, but this is literature received by him as a stockholder afterwards.

The Court: I think they are admissible on the theory that the indictment alleged payment was made, not out of the earnings, but out of the surplus or capital, as the case may have been. I will admit them and overrule your objection.

Mr. Vickers: Exception prayed.

Exception signed and sealed accordingly.

DANIEL J. BRENNAN,
Judge.

(Four letters are marked S. 18.)

Mr. Conlon: May I read part of this exhibit?

The Court: You may read all if you so desire.

Mr. Conlon: The earliest one is the only one I will refer to, on the letterhead of the Public Service Finance Corporation, dated June 18, 1928. Then proceeds the resolution, which I won't read, declaring a dividend of one and a half per cent.

Cross examination by Mr. Vickers.

Q When you heard these radio talks and when you subscribed to this stock you understood the representations, did you not, that this was a six per cent. preferred participating dividend stock, is that right? A That's right.

Q You bought it at $14, is that right? A That's right.

Q Did you know the par value of it at that time? A $10.

LAWRENCE REHACK, sworn in behalf of the State.

Direct examination by Mr. Conlon.

Q What is your business? A Fireman.

Q Where do you live? A Rahway.

Q Fireman in Rahway? A On the Pennsylvania Railroad.

Q Did you subscribe to any stock of the Universal Finance Corporation? A Yes, sir.

Q Under what name was the company doing business at that time? A Why, I heard this on the radio. Of course I didn't ask them much then. I went over there personally to see the men the next day.

Q When did you hear it over the radio? A May 6, 1928.

Q What did you hear over the radio which you now remember? A I heard a lot of stuff, that the stock was so very good and I thought a fellow would get rich overnight.

Q What did you do then? A I went over the next day to see the man.

Q Who did you see when you got over there? A Handler.

Q Where did you see him? A Right in the office on Broad street.

Q Did you have a talk with him? A Yes, sir.

Q What did he tell you? A He told me that this is the best thing in money you can get, you can't invest it no better place than here. He said, "We run a business and bonded by Jersey State," and all that stuff, and he said, "You will get four per cent. on the money you pay in now and ten per cent. when your share is paid up."

Q Ten per cent on what ? A On money on the installment plan.

Q How many shares did you subscribe to? A 250.

Q Did you pay any money down? A Yes, sir.

Q How much? A $1,000.

Q You agreed to pay how much after that? A I agreed if I got $100 this month I would pay $100, and if I got $200 the next month I would pay $200, and if I got $50 I would pay $50.

Q Where did you have this money? A National Bank of Rahway.

Q In a check or savings account? A Savings.

Q How much interest were you getting on it? A Four per cent.

Q What were you told about the interest you would get on this money after you purchased the stock? A Why, he told me this: He said that any money you put in here now, cash money, you will get four per cent. interest, and when you have all your shares paid out you will get ten per cent. dividends; that's all he told me. I said all right, and I paid every month regular and I went in there the last of December and the man told me, he said that when this stock has increased in six months it will be worth $26, and when I went in there in December, instead of finding the stocks increased I found a big lock on the door, and I had to go right back home and then I went over here to Newark to find out what is what and I came over here and had it prosecuted.

Q To go back. What was said to you about the amount upon which you would get ten per cent? A He said "Any amount of money you

put in and pay off,'' he said, ''if you put in $1,000 your interest is going on right off the reel.'' He said, ''If you have $100 to put in next month, that will gradually go right up.''

Q Then, when you paid for your stock in full? A There would be ten per cent. on your stock like shares, dividends.

Q Ten per cent. dividend on your shares? A Yes, sir.

Q Your shares would cost you how much? A $3,500.

Q Your dividends would be how much?

Mr. Vickers: I object.

Q Or what percentage of that?

The Court: Objection overruled.

Defendants' counsel prays an exception to this ruling of the Court.

Exception allowed; let it be signed and sealed and it is signed and sealed accordingly.

DANIEL J. BRENNAN,
Judge.

A You mean how much would I have?

Q No, how much percentage on that $3,500? A If I had it in the bank?

Q No, if you paid a full $3,500 what percentage were you to get on that, not dollars and cents?

The Court: What rate were you to be paid?

A About $400.

Lawrence Rehack, cross.

Q After you had paid for your stock in full, the full $3,500, then you were to get a dividend? A Yes, sir.

Q At what rate was that dividend on that $3,500?

The Court: I do not think he understands. Ask him the percentage.

Q Were you to get six per cent., eight per cent., twelve per cent. or fifteen per cent.? A That would be $10 on a hundred, I would get 10 per cent.

By the Court.

Q What were you told you would get? A I would get 10.

Q 10 per cent.? A Yes, that's what they told me.

By Mr. Conlon.

Q Was there anything said to you over the radio or in the literature or by this salesman to the effect that you would get ten per cent. on the par value, which would mean about six and two-thirds per cent. on the investment? A No, I don't believe so.

Cross examination by Mr. Vickers.

Q You received literature, didn't you? A What?

Q You received literature, pamphlets? A Yes, sir.

Q Got them with you, haven't you? A I will show you what I have (indicating).

Q That is a copy of your contract. You have a copy of the subscription contract and the receipt signed by the agent for $1,000. That is the paper you show me? A Yes, sir.

Q Then, you say that that was on the 12th of May, 1928? Is that right? A Yes, sir.

Q In June, August, September, October and November you made payments, right? A Yes, sir.

Q Then, in December you went down to the office and found a padlock there? A Yes, sir.

Q Found out the Prosecutor had put a padlock on? A Yes, sir.

Q And you were sent up here? A Yes, sir.

Q You were sent up to the Prosecutor's office? A Yes, sir.

Q Then, in May, 1929, you continued with your next payment, is that right? A Yes, sir.

Q You went back and found the padlock off? A Yes, sir.

Q Now, was it Mr. Handler who told you about being bonded to the State of New Jersey, or was it the radio talk? A No, Mr. Handler.

Q Told you that this was a small loan business and that is the way they made their money? A Yes, sir.

Q It was carried on under the laws of New Jersey, charging three per cent.? A Yes, sir.

Q So that's the way these stockholders were going to make their money? A Yes, sir.

Q Because the money when it came in from the stockholders would be loaned out to bring in three per cent. a month? A Yes, sir.

Q You understood so far as dividends were concerned that you weren't to get any dividends until the entire subscription was paid up? A No.

Q In the mean time on all deposits you would get four per cent. interest provided you carried out your contract; is that right? A Yes.

Q When you got your subscription contract and signed it, you read it over, didn't you? A Yes, sir.

LELAND TALIAFERRO, sworn in behalf of the State.

Direct examination by Mr. Conlon.

Q What is your occupation? A I am an assistant general attorney for the Public Service Corporation, in the Law Department.

Q Were you such during the year 1928? A I was.

Q Did you have charge of the conduct of a suit in the Court of Chancery, entitled "Public Service Corporation of New Jersey, plaintiff, against Public Service Finance Corporation, defendant"? A I did.

Q Who prepared the papers in that cause? A I prepared them.

Q There was a bill filed? A A bill filed to restrain the use of the name "Public Service."

Q Was a final decree entered? A A final decree was entered, yes.

Q I show you what purports to be a draft of a final decree. Is that a copy of the draft of final decree in that action? A Yes, it is, and it has the endorsement of the defendant consenting to the entry of the decree.

Q The decree was entered without costs? A Yes.

Mr. Vickers: Without prejudice, assuming it is a final decree, if your Honor will inspect it you will notice that you will not admit it as a final decree. We do not want to be captious, but we know what the proceedings were, and there was no controversy.

Mr. Conlon: It is just a draft of the decree.

The Court: Isn't it admitted that there was a final decree entered concerning the use of this name?

Mr. Conlon: No. This is the first time this has been proved.

Mr. Vickers: There is no denial of that. We do not deny it. We consented to it.

The Court: It is admitted, and the record will so indicate, that there was a final decree entered in the Court of Chancery restraining the Public Service Finance Corporation from the use of the name "Public Service" at the instance of the Public Service Corporation as complainant as against Public Service Finance Corporation as defendant.

Mr. Vickers: And that the order was made either in September or August. We are not able to determine, because in the draft it is marked August and in lead pencil it is written in September.

The Court: The order was entered in the month of August or September.

Mr. Vickers: And consented to by Richard J. Fitzmaurice as solicitor for the defendant.

(Cross examination waived.)

JAMES M. SULLIVAN, sworn in behalf of the State.

Direct examination by Mr. Conlon.

Q What is your occupation? A Examiner of small loan companies for the State of New Jersey.

Q Out of what office did you operate? A From Trenton.

Q What office in Trenton? A The Department of Banking & Insurance, Bureau of Banking.

Q How long have you been connected with that office? A Since September 23, 1926.

Q Since that time have you been continually engaged in the examination of small loan companies? A Entirely.

Q Did you make an examination of small loan companies how often? A We are required to make one at least once a year by statute, that is, the Commissioner of Banking & Insurance is.

Q You have personally made those examinations? A Yes, sir.

Q Of your examinations you made reports to the Commissioner of Banking & Insurance? A The report is filed with the Commissioner.

Q What is the nature and extent of your examination? A The scope of the examination covers the relation of the companies with its borrowers, in other words, to see that the law and regulations of the Department have not been violated in any manner.

Q With reference to what? A Relation of the company to its borrowers.

Q By "its borrowers" you mean borrowers under the small loan act? A The people who

make loans from the company, under Section 5, Chapter 49.

Q Did you at any time during your examination of these companies, or is it one of your duties or requirements that you in any of your examinations of these companies should interest yourself in the conduct of the company so far as the interests of the stockholders are concerned? A Yes.

Q To what extent? A If I notice, during an examination, that there have been some violations of the statute, in those cases I can make a note of it and follow it through.

Q Violations of the statute in what respect? A The General Corporation Act, under which the company is incorporated.

Q Such as what? A Such as the payment of the legal dividends, or any other thing that might come up, which is a violation of the General Corporation Act.

Q That would be a violation under the General Corporation Act?

Mr. Vickers: I object. I do not think this witness is qualified to give an opinion of law to this Court.

The Court: I do not think he can testify as to what it is. He said his major duty is to report any violations of the small loan act. Violations of the relationship with regard to debtor and creditor by reason of the small loans that are made and if he found any such he would report it.

Q You say if any such situation came to your notice you would report it? A Yes, sir.

Q In the course of your duties did you examine these companies in question for that purpose? A It is not prescribed by statute.

Cross examination by Mr. Hobart.

Q When you speak of an examination under the small loan act, are you referring to what is known as Chapter 49? A Chapter 49 of the Laws of 1914.

Q Sometimes called the Egan Act, isn't it? A Yes, sir.

Q Which act provides that the Commissioner of Banking & Insurance issues a license to any person or corporation in the discretion of the Commissioner? A Yes, sir.

Q And that is issued every year on the 1st day of March? A Yes, sir.

Q Before it is issued, is it the practice of the Commissioner and is it the practice of the Commissioner to require a bond? A It is the practice to require a bond in the sum of $5,000.

Q The bond is to the State of New Jersey and is filed with the Commissioner? A Yes, sir.

Q Subject to his approval? A Yes, sir.

Q And the duty of the Commissioner or you, as his examiner, is to see that this bond conforms to the statute and is properly executed and a sufficient security? A That comes under the Commissioner's authority entirely. We examiners have nothing to do with it.

Q It is the practice to have the bonds submitted to the Commissioner?

The Court: He testified he had nothing to do with this Department.

Q Do you know what the practice is in regard to having the bond approved by the Commissioner? A The bond is approved by the Commissioner, yes.

Q The bond requiring the company to personally observe all laws relating to the business?

The Court: Do not answer that.

Q Was a bond filed by the Universal Finance Corporation? A Yes, sir.

Q Have you it with you? A Yes, sir.

Q Please produce it. A (Witness produces paper.)

Mr. Hobart: Will the Prosecutor stipulate that a bond was filed?

Mr. Conlon: I will put it in evidence, if you wish.

Mr. Hobart: There is a bond here endorsed on the back "Public Service Finance Corporation," and I see written over it "Universal Finance Corporation" under Chapter 49 of the Laws of 1914 for $5,000, and endorsed, and is filed April 5, 1928. It was produced from the files of the Commissioner under subpoena.

Mr. Conlon: From the files of the Department.

Mr. Hobart: I see another one marked "Universal Finance Corporation" for $5,000, filed March 1, 1929, and a stamp by the Commissioner on it.

Mr. Conlon: I object to that.

The Court: I will permit it.

Mr. Conlon: I do not think this is within the purview of our investigation at this time.

The Court: All that has been proved is that there was a bond filed with the Commissioner.

Mr. Hobart: The only reason we are putting this in is because we represented that we were bonded and the State contends that we were not. If the State will withdraw that contention I will withdraw the offer.

Mr. Conlon: I will withdraw nothing.

Mr. Hobart: I ask that these two bonds be marked for identification.

(Same are marked D. 12 and D. 13 for identification.)

The Court: The originals are the best evidence, but the photostatic copies may be marked by consent of counsel.

Mr. Hobart: May it be understood that you do not require us to submit formal proof by requiring proof of attestation?

Mr. Conlon: That will be so understood.

Q Referring to the license under Chapter 49, do you know whether a license was issued to the Public Service Finance Corporation under the Small Loans Act? A Yes.

Mr. Conlon: I will admit all those papers when proof is presented.

Mr. Hobart: All right, I would like to show the witness the original license and ask him to identify it and mark it for identification.

Q Is this the original license? A This is the original license.

Mr. Hobart: May it be marked for identification?

(Same is marked D. 14 for identification.)

Q Was another license issued on March 1st of this year for the Universal Finance Corporation? A I presume so, but I do not know.

Q Now, under this statute from time to time the department issues certain regulations, do they not? A Right.

Q That has been done ever since the law was passed, hasn't it, as far back as you know? A Yes.

Q Have you with you a copy of the regulations issued by the Department? A Yes.

Q I would like a copy of that in effect during the year 1928 down to the 24th of December, 1928. A This copy seems to have been in effect afterwards. I believe that is the matter relating to the restriction of the words bank and banking.

Q Let me show you what purports to be a printed copy headed "Information Rules and Regulations relating to the business of making small loans." Dated August 31, 1922. Do you identify that as a copy of the rules? A That is a copy of the regulations.

Mr. Hobart: May it be marked for identification?

(Same is marked D. 15 for identification.)

Q You have handed me another copy dated August 31, 1922, which is a copy of the regulations now in effect with some changes made a few months ago? A Yes, sir.

Mr. Hobart: I ask to have this marked for identification.

(Same is marked D. 16 for identification.)

Q I now call your attention to a paper dated December 26, 1928, headed "Additional Rules & Regulations." Was that issued by the Department? A Yes, that is the section I just referred to as being included under the new regulations.

Q In that regulation, am I right, for the first time the Department made a specified regulation for prohibiting the use of the word "bank" or "banking"? A That is the first time it was printed, although it was prohibited previous to that.

Q You mean according to the practice of the Department? A The Department did not allow the company to use it when it came to their notice.

The Court: It was a general legal prohibition.

Mr. Hobart: I ask to have these rules and regulations marked for identification.

(Same are marked D. 17 for identification.)

Q The words referred to here are "bank," "banking," "industrial bank" and "industrial banking"? A That was all prohibited by the Department and taken up some months previous with the Universal Finance Corporation, at the request of Mr. Burnett of the Davis Committee.

Q At his request you personally made an examination of this very company, the books? A Not at the request of Mr. Burnett, at the re-

quest of Mr. Wilson, and it was brought about by their financial statement submitted to the Department as of November 30th.

Q 1928? A Right.

Q At any rate, under the practice, Mr. Hilton, who is the Deputy Commissioner— A Yes.

Q The Department objected. You objected, as agent to the Department, to the use of the word "banking"? A Yes.

Q Or "industrial banking," by this company? A Yes.

Q To whose attention did you call the fact? A To the attention of Mr. Hardy, the manager of the Newark office.

Q When you called his attention to that what was done? A It was immediately rectified.

Q What was done? A They were using the words "industrial banking" in advertisements and on their windows and they changed it to "industrial loans."

Q In other words, they erased the word "banking" at the request of your Department and used the word "loans" instead? A Yes, sir.

Q Do you recall when that was? Was it some time in the month of December? A No, I imagine a month or two previous; I should say in about September.

Q You observed that word "banking" yourself? A It was called to my attention by some other companies in Newark who were being examined at the time, and I took the matter up directly with the Commissioner, and he advised me to call at their office and have them discontinue it.

Q Where was that word "industrial banking," on the company's office, on the window? A It was on the window, where I saw it.

Q The window facing on Broad street? A I believe on Market street.

Q As soon as you called the attention of the manager, Mr. Hardy, to the request of the Department, that word was immediately erased? A Shortly thereafter.

Q What word or words? A The word "banking" was taken off.

JULIUS H. COHN, sworn in behalf of the State.

Direct examination by Mr. Conlon.

Q What is your business? A Certified public accountant.

Q Where is your office? A 972 Broad street, Newark.

Q The name of your firm is what? A Cohn & Company.

Q How long have you been in that business? A Ten years.

Q You are a certified public accountant? A I am, of the State of New Jersey.

Q You have been conducting business in this city continuously for the last ten years as a certified public accountant? A Yes, sir.

Mr. Conlon: I offer this witness as an expert.

The Court: Do you wish to examine him as to his qualifications, Colonel Vickers?

Mr. Vickers: We do not dispute his qualifications.

The Court: All right, the witness' qualifications are admitted.

Q Did you make an examination of the books of account of the Universal Finance Corporation? A Yes, sir.

Q You made that examination at whose request? A The Prosecutor of the Pleas of Essex County.

Q When did you start that examination? A December 27th or 28th.

Q Where did you make it? A The records were made available to us in the office of the Prosecutor in the Hall of Records.

Q What books of account did you have available for that examination? A We had available for our examination all the books and records of the Universal Finance Corporation and the Financial Investment Company.

Q Did you have the use of those books during the entire course of your examination? A We did.

Q That examination was under your supervision, personal supervision, was it? A It was.

Q Did you make up a report showing the result of your examination? A We did.

Q Have you that report or a copy of it before you? A Yes, sir.

Q Either referring to that report, as you wish, or from memory, in going over these books, answer these questions—

Mr. Vickers: Of course that will be objected to if the witness is permitted to go over from his memory what is contained in the original records at the disposal of the Prosecutor.

The Court: I assume there is an analysis of the report. Is there?

Mr. Conlon: Yes, your Honor.

The Court: Then, why not use that?

Q I made a statement and you heard it, in my opening to the jury in this case?

Mr. Vickers: I object to what the Prosecutor stated. That is his responsibility and has nothing to do with this witness.

Mr. Conlon: Withdraw that question.

Q How much money was invested in the Universal Finance Company in its inception? How much money in cash? A The sum of $250 and a note of $1,000 were given in payment of 5,000 shares of common stock at the rate of 25 cents per share, and the note was that of D. D. Hollenbaugh.

Q The cash was paid in by whom, if you know?

Mr. Vickers: These questions are objected to. The Prosecutor is obliged to produce the original evidence. This witness cannot testify to something from his memory.

The Court: He is testifying from the books of the company and the books should be the basis of his testimony.

Mr. Vickers: The witness cannot testify to the result of something which is shown by original evidence which is in the hands of the Prosecutor, until the original evidence has been produced.

The Court: It should be produced.

Mr. Conlon: The original evidence is not in the possession of the Prosecutor. We haven't the possession of the original books. Mr. Cohn has before him and is now testifying, as I understand it, from the report drawn up by he and his associates from those

books which is the best evidence that can be offered, under the circumstances.

The Court: Where are the books?

Mr. Conlon: In the possession of the defendants. We have no right to subpoena them.

Mr. Vickers: This, however, is dealing with the Financial Investment Company.

The Court: He is testifying from an examination made of the books of the company?

Mr. Conlon: Yes.

The Court: He may testify to the result of his examination.

By Mr. Conlon.

Q Have you before you the information from the books of this company which I asked you about as to the original investment in the company? A Yes.

Q Can you tell us by whom the investment of the $250 was made?

Mr. Vickers: I object on the ground that the best evidence must be produced here so that this Court and jury can tell whether or not the conclusions of the witness are correct as to findings of fact. I do not object from a certified public accountant's point of view to that question of fact.

The Court: The source of the information of what this witness has testified is an examination of what the books show. If he made an examination he can testify from the information he compiled or prepared at the time as a result of that examination.

Mr. Vickers: I do not object from an accountant's standpoint, but I do object to his testifying without the books.

Q Can you tell that from the books? A I cannot state the source of the receipt of the $250 which is reflected in an account, but I know that the money came in. But I cannot tell offhand.

Q Now you say there was cash of $250 and a note of $1,000 of Hollenbaugh put into the company? A Yes, sir.

Q Has that note of $1,000 been paid? A $125 was subsequently paid on account reducing the note to $875 and the $875 was paid.

Q When was that finally paid, do you know? A My recollection is towards the end of the year.

By the Court.

Q 1928? A 1928.

By Mr. Conlon.

Q Did you examine the books as to the amount of the stockholders? A We did.

Q Did you make a record of the stockholders and their holdings in the Universal Finance Company, of the common stock?

Mr. Vickers: I object on the ground that is not the best evidence.

The Court: What have you to say about that, Mr. Conlon?

Mr. Conlon: I think Colonel Vickers is right, but if he insists on it we will have to put all these books into evidence.

The Court: It is his position of course that that is the best evidence and as long as they are in existence they should be produced.

Mr. Conlon: I will proceed in that manner then?

The Court: Yes.

Q I show you two books and I ask you what they are? A This is a stock book of the Universal Finance Corporation and this book is a stock book of the Public Service Finance Corporation.

Q This is the original stock certificate book, is that right? A Yes, sir.

Mr. Conlon: These two books are offered in evidence.

Mr. Vickers: No objection.

(Same are marked Exhibits S. 19 and S. 20.)

Q Did you make a list from these books of the stockholders and their holdings? A We did.

Q Have you that list before you as of the time of your examination, December, 1928? Did you make an examination of these books from December, 1928? A From December 27, 1928, on.

Q Tell us first of your examination and then the holders of the stock and the amount of their holdings. A There were 5,001 shares in total issued; there was presumably to be 5,000 issued. There was a certificate of 334 shares which we were advised was to be 333 to Frank R. Tappan. There was a certificate of 334 shares, Dewi T. Evans. Three certificates of 100 shares each to Richard J. Fitzmaurice. Another one of 33 shares

to Richard J. Fitzmaurice. One for 500 shares to D. D. Hollenbaugh. One for 1,333 shares to Belle M. Edwards and another one for 1,334 shares to Andy Edwards. 1,333 shares to T. P. Edwards.

Q Are those certificates Nos. 9, 10 and 11 to Belle Edwards, Andy Edwards and T. P. Edwards, are they in the books? A They were in the books at that time, but endorsed in blank.

Q They were in the books but endorsed in blank? A Yes, sir.

Mr. Conlon: I request the defendant to produce the books of the Universal Finance Company which were in the possession of the State at the time of this examination and which were returned to them with the understanding that they would be produced.

The Court: It will be so noted on the record.

Mr. Vickers: Very well.

Q Now, did you make on examination of the books of the Universal Finance Corporation, of their operations for the period beginning April 1, 1928, and expiring June 30, 1928? A Yes, sir.

Q Have you that analysis before you? A Yes, sir.

Q Can you tell me the amount of the income this company received from this small loan business during that period?

Mr. Vickers: I object on the ground it is incompetent and irrelevant. There is no charge in this indictment that any representations were made or any dividends paid, de-

cleared or promised from the small loan business.

The Court: Sustain the objection. The limit of the averment is that these defendants represented that dividends had been paid out of earnings whereas such was not the fact.

Mr. Conlon: It goes further than that. In the literature it is represented definitely that this is a small loan business and uses the words "industrial banking" and mentioned that they would give a loan on small notes.

The Court: I cannot conceive any reason why you cannot show what the profit and loss might have been.

Mr. Conlon: I intend to show the whole case.

The Court: I think that what we are interested in, based on the averment in the indictment is the profit or loss, as the case might have been, whether or not there were earnings sufficient to warrant the declaration of dividends.

Mr. Conlon: We go further than that.

The Court: I have no objection, as part of that then, for you to show what the source of income might have been.

Q Will you tell me the total income from the operation of this company for the period beginning April 1, 1928, and ending June 30, 1928? A The gross income from all sources was $200.19.

Q That was for a three months' period ending June 30th? A Yes, sir.

Q The gross income? A Yes, sir.

Q What part of that income was received from interest on the small loan business? A $41.53. There was also interest on bank balances and so forth, of $4.35, which may be attributable to the small loan business; possibly on bank balances.

Q The total income from operations was $200.19 and of that amount $43.53, that includes $4.35 possible interest on bank accounts, was the income from the small loan business? A Yes, sir.

Q What were the operating expenses during that period? A $1,046.38.

Q Was there a net profit in the operation of that company during those three months?

Mr. Vickers: I object to that as calling for a conclusion without all the factors upon which the jury can determine whether or not the witness has formed a part of it.

The Court: The objection will be overruled.

Q (Question read.) A There was a net loss for the three months.

Q Of how much? A $846.19.

Q Was there any dividend paid by that company for that period ?A There was a dividend declared.

Q When was that dividend declared? A I don't know the exact date.

Q Do you know about when? A The end of June or the early part of July.

Q It was paid as of what date? A As of June 30th.

Q What was the amount of the dividend paid? A $1,208.75, as of July 1, 1928.

Q Now, during that period had this company purchased any securities ? A It had.

Q Did you examine the securities? A The securities were in the physical custody of one of the officers or of the Broad and Market Bank.

Q Did you examine the records of the securities? A I examined the record of the securities, yes, and knew that they were paid for; there was no question as to that.

Q They were all securities that were quoted on the New York Stock Exchange? A With one exception.

Q That one exception was what? A Excuse me. They were all securities upon which prices could be secured. Most of them were on the New York Stock Exchange but several were bank stocks usually listed on what they call over the counter markets.

Q Did you make a note from the books of the cost of those securities to this company? A Yes, sir.

The Court: The acquisition price?

Mr. Conlon: Yes.

Q Speaking of the period between April and June 30th? A Yes, sir.

Q Did you ascertain the market value of those securities as of June 30, 1928?

Mr. Vickers: I object. Because we have admitted the qualifications of this witness I do not know that he is qualified as to the valuation of securities along that line.

The Court: I was going to say that only Providence probably knows the real price of securities, prices fluctuate so from day to day that probably no one really knows. Do you mean the market price?

Mr. Conlon: Yes. The market quotations for these securities.

The Court: The acquisition price or quotation as of the 30th of June?

Mr. Conlon: Yes.

The Court: You may give us that.

A There was a difference—

Mr. Vickers: I object to any differences.

Q Did you make such examination? A Yes, sir.

Q Were those securities quoted at more or less on June 30th than the acquisition price?

Mr. Vickers: I object, because the jury has no way of telling on what the witness bases his opinion. As your Honor has indicated the acquisition cost is competent, and it is competent for him to say what the acquisition figures were, but it is not competent for him to tell us what the price of the securities was until we have evidence to prove that more or less.

By the Court.

Q You established from the books what the acquisition price was? A Yes, sir.

Q You established from quotations for the day what the price was on June 30th? A Yes, sir.

By Mr. Conlon.

Q The difference between those two figures was what?

Mr. Vickers: The question is objected to on the ground that we are entitled to the figures to find out whether he is accurate or not.

The Court: That you can bring out on cross examination.

Mr. Vickers: There is no cross examination of the witness until he has testified to a fact.

The Court: Then examine item by item, Mr. Conlon.

Q What was the acquisition cost of the securities which were acquired between April 1st and June 30, 1928? A $168,661.29.

Q That was the acquisition cost? A Yes, sir.

Q What was the quotation on those securities as of June 30, 1928? A $154,879.37.

Q That was a depreciation of how much? A $13,781.92.

Q Now, as I understand it, there was a net operating loss for that period of $864 and some cents? A Yes, sir.

Q And in addition to that there was a depreciation in the securities now held by this company of some $13,700, is that correct? A Yes.

Q So that the net loss of this company for that period was the sum of those two figures? A I don't want to say that that was the net loss for that period; that indicates that is of June 30th, one day, those securities had the realizable value of almost $14,000 less than what they cost. That value shifts every minute in the day.

Q The net loss on the operations of the company during that period was $846 and some cents? A Yes.

Q Were the dividends that were paid as of June 30, 1928, by the Universal Finance Corporation paid out of the earnings of the company?

Mr. Vickers: I object on the ground it is not material whether the dividends were paid out of the earnings of the company, for the reason that the Corporation Act of New Jersey provides what dividends may in the discretion of the directors be paid out.

The Court: The objection will be overruled.

Mr. Vickers: Exception.

Mr. Vickers prays an exception to this ruling of the Court.

Exception noted. Let it be signed and sealed accordingly.

DANIEL J. BRENNAN,
Judge.

Q (Question read.) A No.

Q Did you make an examination of the books for the period covering July 1st to September 30, 1928? A Yes, sir.

Q What was the gross income from the company's business during that period? A The gross income from all sources which included this business and dividends on securities only was $5,042.32.

Q Of that amount how much was received from interest on the notes which the company held in the course of this small loan business? A $7,211.20.

Q Now, the operating expense during that period amounted to how much? A $6,836.82.

Q Was there a loss or profit on the operations of the company during the three months' period between June and September? A There was a loss of $1,794.45.

Q Now, did you make a comparison on that day between the acquisition price of the securities held by the companies and the quotation, the market quotation, yes or no? A Yes.

Q Of course, the acquisition price was what? A I haven't that information in available form. I know what the net figure is, but I don't know the gross.

Q By "net figure" you mean the difference? A Yes, I have that figure.

Q You can later get us the items? A I think so, yes.

Q Until you get the items tell me what the net figure shows the difference to be between the cost and the quotation.

Mr. Vickers: That is objected to on the same ground as previously.

A I haven't the details available to make that.

Mr. Conlon: Withdraw that question.

Q The loss in operations between June 30th or July 1st and September 30th is $1,794.45. Was there included in that a loss of $846 for the previous three months? A No.

Q That was an additional loss? A Yes.

Q The loss of the operations was what? A $2,640.64.

Q Was there a dividend paid by the company on September 30, 1928? A There was a dividend as of September 30, 1928.

Q How much was that dividend in cash? A $2,476.20.

Q Was or was not the dividend which was paid to the preferred stockholders of the Universal Finance Corporation as of September 30th paid out of the earnings of the company?

Mr. Vickers: I make the same objection.

The Court: There will be the same ruling.

Mr. Vickers prays an exception to this ruling of the Court.

Exception noted. Let it be signed and sealed accordingly.

DANIEL J. BRENNAN,
Judge.

A It was not paid out of the earnings.

Q Up to that time did the company have any earnings?

The Court: Any operating earnings, is that what you mean?

Mr. Conlon: I will withdraw that question.

Q Did you make an examination of the books to indicate the situation for the three months beginning October 1st, or for the two months beginning October 1st and ending November 30th? A Yes.

Q During that two months' period what was the total income of the business? A Gross income?

Q Yes. A $8,365.11.

Q Now, how much was received as interest on notes from the small loan business? A $2,571.37.

Q How much were the expenses during that two months' period ending November 30th? A $8,184.45.

Q The net on the operations for those two months? A $178.66.

Q That was the net profit, was it? A Yes.

Q Now, in figuring that net profit of $178 on November 30th, did you take into consideration the loss of operations in the six months' period before that? A No.

Q The total loss for the six months before that was what? A $2,640.64.

Q That made the entire net loss for the period from April 1st to November 30th how much? A $2,461.98.

Q Have you before you those statements you have been quoting from? A Yes.

Mr. Conlon: I offer the statements in evidence. A statement made by this witness and to which he has been referring as a memorandum during this testimony, this being testified as being a resume of the books of account of the defendant beginning on April 1, 1928, and ending November 30, 1928.

Mr. Vickers: I object to any part of this document.

The Court: I do not know what relation one part has to the other.

What are the other sheets of the report?

The Witness: Some papers are explanatory comments which may be prejudicial; I don't know whether you would want them or not.

By the Court.

Q For the defendant? A Yes. Where we give comments on the statements.

Mr. Conlon: I will put in evidence the entire statement.

The Court: I can see no objection to the profit and loss statement as the State claims unless there appears that there is some connection between the other parts of the report and these.

Mr. Vickers: We do not know what the witness is testifying from and according to the rules of evidence one cannot excerpt a part and leave out the balance. If we can have this to submit to an accountant, after we do that it may be admissible.

The Court: This is a profit and loss statement for each one of these parties, to which Mr. Conlon has been referring.

Mr. Vickers: I think that is probably so, but we haven't seen it.

Mr. Conlon: I do not think his seeing it is going to make any difference.

The Court: The foundation if there are connecting parts of it is without merit unless it may be shown what they are, but if defendant's counsel feels that he can show what is in there I suppose the only thing would be to let him examine it.

Mr. Vickers: By having the accountant look at it and tell us what it is. The objection is to the fact that the witness is testifying to something which is not connected up.

The Court: The State is showing profit and loss connected but independent. That is my assumption. Is that true?

The Witness: Yes.

The Court: And they stand by themselves, but if you feel that you want to examine them for the purposes of establishing validity I think you should have that opportunity.

Mr. Conlon: I understand that tomorrow morning all the books of the Universal Finance Company that I referred to before will be produced.

The Court: I have too much respect for counsel's statements to feel otherwise. I understand that all the books of the companies will be here tomorrow.

Mr. Hobart: That is subject to one condition, that the Prosecutor bring the books he has.

The Court: Has he any books in his custody?

Mr. Hobart: He certainly has.

The Court: Well, they will be here also.

At this point the Court adjourned until Wednesday, May 29, 1929, at ten o'clock A. M.

THIRD DAY.

(Continued pursuant to adjournment.)

Counsel present as before stated.

JULIUS H. COHN, recalled in behalf of the State.

Direct examination (continued) by Mr. Conlon.

Q Yesterday afternoon you gave us from the statement you made the profit and loss statement for the period as I remember of June 30th, September 30th and November 30th, is that correct? A Yes, sir.

Q Did you prepare an income statement showing the profit and loss covering the entire period from April 1, 1928, to January 4, 1929? A Yes, sir.

Q Have you such statement before you? A I have.

Q In that entire period what was the total income from the loan business? Let me ask you first. What was the total income of the business?

The Court: From all sources?

Q From all sources. A In preparing the statement—

The Court: No.

A I will have to qualify it.

The Court: You may.

A In preparing the statement we divided the income as to what we thought was their loan business.

The Court: As I understand it what this witness purports to testify to in response to that question is what he conceives, as an accountant, to be the income from these sources. I see no reason for his going into detail with reference to it at this time. He may answer the question as to indicate from all sources and from every source, if it is not objectionable.

Q (Question read.) From April 1, 1928 to January 4, 1929? A $22,614.35.

Q What were the operating expenses during that period? A $23,136.26.

Q Was the net result a profit or loss? A A loss of $1,734.81, after giving effect to a provision for revaluation of the securities from the acquisition cost to the quoted market price as of January 4, 1929.

Q Now, in those figures was there included the dividend paid? A No.

Q Did this Universal Finance Company have on hand as of December 30th sufficient moneys from earnings to pay a dividend of two and a half per cent. for the quarter ending December 30th, that is, to pay a quarterly dividend at the rate of 10 per cent. per annum? A No.

Q Did you compute the value of the assets, the amount of the assets of the corporation with respect to the stock, both common and preferred then issued as of January 4, 1929? A At the request of Mr. Lane we computed the liquidating value of the shares of stock upon several bases. However, in the figure we computed for him we neglected a certain amount of expense, which had not been expended, which they had only been anticipating, eliminating that item.

Q That was litigation expense? A Yes, on account of certain litigation.

Q Eliminating any litigation expense whatever, what was your computation as to the liquidation value of the stock, common and preferred, then outstanding of the Universal Finance Corporation?

Mr. Vickers: That is objected to on the ground it is immaterial and irrelevant, and furthermore incompetent under the indictment in question. What may have been the liquidating value is purely a speculative item and not embraced within this indictment.

Mr. Conlon: It is a matter of dollars and cents at this very time I am questioning this witness about.

The Court: You are trying to establish the capital value of the corporation as of this date?

Mr. Conlon: Yes, it would be an increase in price on account of the increase in value.

(Argument.)

The Court: Why aren't we limited to the capital value as of the time of his examination?

Mr. Conlon: That, in effect, is what it is.

The Court: Doesn't that effect, as I see it, or isn't that, the very fact of liquidation, one of the things that might tend to work an injustice or unfairness to the particular corporation? I think that the capital value is pertinent to the issue, what the capital value was, but it would have to be based on his examination.

For the purposes of the record I will sustain the objection.

Q Are you able to tell us the capital value of the outstanding stock of the Universal Finance Company as of January 4, 1929? A Yes, sir.

Q What was it? A $10.80 per share of preferred stock.

Q That is what percentage of the par value of the stock? A That is in excess of the par value.

Q I do not mean par value, I mean the subscription price of the stock.

Mr. Vickers: That is objected to on the ground that has nothing to do with this situation. The stock is sold at the par value, where the par value is known throughout the financial world, and certainly no allegation in this indictment has any bearing on the question as to whether or not this was par value or not par value stock. We are not charged with any misrepresentation as to whether this was or was not par value stock and this question is utterly incompetent and immaterial.

Mr. Conlon: This will prove the statement made by these defendants that in the month of December, by reason of the increase in the value of the stock the stock was going to be raised from $15 to $16 a share.

(Argument.)

The Court: Can't I offer par value stock for whatever I can get for it in the market?

Mr. Conlon: Yes, but that has nothing to do with the representations made.

The Court: Objection overruled.

Q (Question read.) A About 65 per cent. I say "about" because some stock was sold at $14, some at $15 and some at $16.

By the Court.

Q That is just striking an average? A About.

By Mr. Conlon.

Q That is as of January 4th? A As of January 4th.

Q Are you able to tell us the amount of cash that was paid by the Universal Finance Company, and when I use that word I also use the Public Service Finance Corporation to the Financial Investment Corporation or its predecessor during the period from April 1, 1928, to January 4, 1929? A Yes, sir.

Q How much was paid in commissions during that period? A $178,575.08.

Q That was the amount paid during that period by the Universal Finance Corporation to the Financial Investment Company or its predecessor for commission on the sale of stock? A Yes, sir.

Q Are you able to tell us the amount of preferred stock that was issued on June 30, 1928? A Yes, sir.

Q First I want to know how much was actually issued and paid for and how much had been paid on the stock subscribed for, but not fully paid? A On June 30th the preferred stock issued and outstanding amounted to 8,600 shares. The subscriptions to stock amounted to 19,844 shares.

Q Now, can you tell us how much that was in cash? A The total stock issue?

Q As of June 30th, and the amount paid in on the stock not yet issued but subscribed for. A The books reflected a capital stock issued and outstanding and a surplus account resulting from the sale of the stock under those two figures. Those two figures are $288,989, that is after a deduction for financing expense.

Q In other words, am I correct in this statement, that that was the amount of cash the company had on hand on June 30th as the result of money received from the sale of stock which was net to the company? A I couldn't say the company had that in cash on hand. The receipts were under "Sundry Assets."

Q That amounted to two hundred eighty-eight and some odd thousand dollars? A Yes, sir.

Q On that day, June 30th, how much did the Universal Finance Corporation have invested in small loans? A They had two classes of investment of small loans, one known as chattel mortgages in which there was $550 loaned, and the other one was on notes, which is on a two name guarantee paper, $9,560. There was also a loan to stockholders and subscribers of $819.60, making a total of $10,929.60.

Q That is as of June 30th? A Yes, sir.

Q On June 30th how much money did the Universal Finance Corporation have invested in stocks? A $168,661.29 at cost.

Q Now, you are able to give us the same information as of September 30th, are you? A Yes, sir.

Q How many preferred issues were outstanding on that day? A 11,598 shares. If you wish I can give it to you in money?

Q Yes. A $115,980, and the subscriptions to the stock was $229,756. To that must be added the surplus from the sale of capital stock, explained before, amounting to $3,756.55.

Q So, on September 30th how much had the company received in money? A Net?

Q Net, from the sale of this preferred stock? A I have to modify that answer by the fact that all of this money was not as yet received. There were subscriptions from subscribers.

Q Can you tell us how much money net has been received?

Mr. Vickers: I object. I take it that the word "net" refers to the amount not received?

The Court: Yes.

A The figures I am just giving you aggregate $350,742.55, but on September 3rd subscribers had not as yet paid a total of $139,484.64, therefore, the amount actually received was $211,-257.95. I would have to correct those figures as of June 30th.

Q Yes, do that and give us the cash they had on hand as of June 30th.

The Court: Do you mean cash from securities?

Mr. Conlon: Yes.

The Court: What we are interested in is the assets of the corporation as of that time, whether it be in cash or securities.

By Mr. Conlon.

Q In other words, eliminate from your figures the amount of money not yet paid by the people

making weekly or monthly payments, so that you give us the amount of cash received up to June 30th? A I said before that the total capital surplus as of June 30th was $288,989. Subscribers to preferred capital stock as of that date had not as yet paid $133,420.72, therefore the net cash received by this corporation was $155,568.28.

Q In September it was how much? A $211,257.95.

Q On November 30th how much? A As of November 30th?

Mr. Vickers: November 30th is not an interest period, dividend period.

The Court: I do not know when the dividend period was.

Mr. Vickers: June and September.

A I have December 30th here.

Mr. Vickers: It would be December 31st.

A We have it as of January 4th, which is actually the same date. If you remember, January 1st was on a Saturday and then came Sunday and the 3rd was the first day.

By Mr. Conlon.

Q As of December 31st. A As of December 31st, there were subscribers to 25,539 shares, which at $10 would show a value of $255,790. However, there was a capital surplus arising out of the stock in excess of the $10 after accounting for the finance expenses of $23,712.50. There was preferred stock actually issued and outstanding of 22,600 shares which had an issue value at $10 of $226,000. There was also out of

the stock actually issued a surplus, after finance expenses, of $16,698.30, then a total of $522,-200.80 against this subscribed stock on hand as not yet paid in the sum of $250,973.97. The actual net cash proceeds received from preferred stockholders as of January 4, 1929, or December 31, 1928, was $304,226.83.

Q The amount due on stock that was then sold was how much? A $218,000.

Q That makes a total of five hundred twenty-two and some odd thousand dollars which was either paid to the Universal Finance Corporation or was due it? A Yes, sir.

Q The sales commission on that stock had been deducted, had it? A Yes, sir.

Q So, there had been paid by the subscribers that amount plus approximately 25 per cent.? A Yes, sir.

Q In other words, $522,000 plus— A Plus 178, a total of $700,000.

Q That had either been paid or was obligated to be paid by subscribers to the stock up to December 21, 1928? A Yes, sir.

Q Let us go back and tell me again the amount that was invested in the small loan business on June 30th? A $10,929.60.

Q On September 30th? A $43,929.64.

Q And on December 31st? A $102,199.63.

Q Then, please, these figures: The amount of securities for the cost price of the securities or stocks this company had on hand on June 30th? A $168,661.29.

Q On September 30th? A $171,441.42.

Q And on December 31st? A $96,600.15.

Q I show you some sheets of paper headed "Universal Finance Corporation, Comparative Balance Sheets," and I ask you if you prepared them? A Yes, sir.

Q Where and when did you get your information from which you prepared them? A The information was secured from the books of the Universal Finance and some information was necessary from the available records of the Financial Investment Company, all of which was in the custody of the Prosecutor at the Hall of Records, from December 27, 1928, to January 7th or 8th, 1929.

Q Do these schedules properly reflect the condition of the books of the Universal Finance Corporation as of the date indicated on the paper? A They do, in my opinion.

Q These figures were taken from the books? A Yes, sir.

Q That is also true of the profit and loss statements covered by these different days that we have been speaking of? A Yes, sir.

Mr. Conlon: I offer this schedule in evidence.

Mr. Vickers: I object to it on the ground that so much of the evidence as hardly is relevant or material, the witness has testified to, and the Prosecutor would be no more entitled to have the written deduction of that go into the jury room than he would to have excerpts of witnesses' testimony go in.

The Court: What do you say about that?

Mr. Conlon: These are not written deductions. These are for instance from the books, the amount of the stock outstanding on a certain specific date.

The Court: What virtue have they from any other hearsay statements? All they purport to be is a copy of the records he has established. Mr. Cohn has in the rec-

ord comparative statements for the dividend period showing the condition of the company and he has testified to that without objection as to his opinion as an expert, supplemented by his physical examination of the books, and I do not believe even if they are the production of an expert that they have any higher validity than any other form of testimony in this respect.

Mr. Conlon: I will not press the offer.

The Court: For the purposes of the record I will sustain the objection.

Cross examination by Mr. Vickers.

Q There are divergent theories of accountancy, aren't there? A Yes, sir.

Q Sometimes very sharp differences of opinion arise in accountancy, do they not? A Yes, sir.

Q In the matter of the total earnings of this company as of June 30th, have you made any allowance for accrued interest on loans? A No.

Q In the figure that you have given as the total earnings from all sources have you made any allowance for declared dividends on securities owned by the company? A No.

Q In the figure that you have given as the total earnings from all sources have you made any allowance for apportioned dividend earnings for the period of business up to June 30th? A That is never done.

Q I did not ask you that, I asked you whether you did it in this case? A No.

Q In the figure which you have given for the total earnings from all sources, have you made any allowance for the value of potential profits on rights owned by the company? A No.

Q Do you know the amount of the accrued interest on loans? A We approximated that at one and a half per cent. of the outstanding loans which is a half a month at the rate of three per cent.

Q If you had allowed them that accrued interest on loans you would approximately have increased by two hundred per cent. the amount which you say was the income from all sources, isn't that so? That may be answered yes or no. A No.

Q By how many per cent. would it have increased the figure you gave? A 65 per cent.

Q Do you know the amount of the declared dividends on the securities owned by the company? A Yes, sir.

Q How much? A $137.50.

Q As a matter of fact wasn't it $180.45? A Our records were $137.50.

Q Were those declared dividends of stocks of the Public Service Corporation of New Jersey, Standard Oil Company of New Jersey, Guaranty Trust Company of New York and the Canadian Pacific Railways? A Yes, sir.

Q At the time you made your computation you knew that the dividends had been declared approximately the 14th of June, payable on the 2nd day of July, as of June 30th, didn't you? A I can't answer that from available data.

Q You knew that dividends were not declared on the 30th of June, didn't you? You had on that day the corporation books, that of the resolution, and you have testified here that a dividend was declared, isn't that right? A Yes, sir.

Q You got that information from the minutes of the corporation, didn't you? A Yes, sir.

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Julius H. Cohn, cross.

Q You knew it was important, didn't you, to find?

Mr. Conlon: I object. The witness has not said that he didn't know; he said he didn't know from the information he has available.

(Argument.)

The Court: I think he can answer that question. Will the stenographer read the question?

Q (Question read.) To find as of what date the action of the Board of Directors was in declaring this dividend, isn't that so? A Yes, sir.

Q And you at the time did determine what date the Board acted on it? A Yes, sir.

Q Didn't you make a note of it? A June 14th.

Q That is what I asked you before. A I thought you referred to the Standard Oil Company, and so forth.

The Court: I had the same idea.

Mr. Vickers: I am sorry I was misleading.

Q I meant the dividends of this company. You knew, did you not, that these directors had a right to take into consideration the value and the increased value of the securities which they held in hand as of the date when they held their directors' meeting when they declared the dividend. You knew that, didn't you?

Mr. Conlon: I object to the question. The question in this case is not whether these di-

rectors had a right to declare this dividend, the question in the case is whether the dividend was declared on some earnings, and I submit that any other entry will confuse the issue, and I object to this question as immaterial.

The Court: I suppose whether they had a right is what the question refers to. What the practice is under the circumstances is well known to the Court.

Mr. Conlon: The question is not whether or not on June 14th they had a right to declare a dividend, the question is whether after June 30th when they made representations that those dividends which were made as of June 30th out of earnings, whether they were paid out of earnings.

The Court: One of the factors may be the increased value of certain holdings of the company.

Mr. Conlon: A dividend was declared as of June 30th.

The Court: The resolution was passed as of June 14th, and I see no reason why an inquiry cannot be established with reference to the condition as of the time of the passing of the resolution.

Q (Question read.) A I think that is a legal question in the matter of business practice.

By the Court.

Q You may answer what the business practice may be. A There are instances where boards of directors do use the appreciation unrealized, of course, of securities in their decision

as to whether they should pay a dividend at a certain period.

By Mr. Vickers.

Q You do not agree with that theory, do you? You may answer that yes or no. A I do not agree with that theory.

Q Now, then, for the sake of certainty I show you the minutes of the meeting of the Board of Directors of this corporation held on June 14th, and I call your attention to the resolution and I ask you whether that is the source of your information, was the source of your information at the time you made this analysis and drew your conclusion? A Yes, sir.

Q Although you see that the dividend is payable on the 2nd day of July? A Yes, sir.

Q And that the action was declared on June 14th, a dividend of 6 per cent. on the preferred stock and 1½ per cent. participating dividends and 1 per cent. upon the outstanding preferred stock hereby as declared, is that right? A Let me see that. "That the quarterly dividend be prorated from the date of purchase of the six per cent. participating stock to June 30th for the quarter ending June 30, 1928, and that the dividend was to be one and a half per cent. together with a participating dividend of one per cent. That the dividend was to be paid on July 2nd to stockholders of record on June 20th."

Q Now, did you take into consideration, in giving the total earnings from all sources as of June 30th, the fact that there were dividends declared due on July 2nd of the following securities owned by the company: American Exchange Bank, Irving Trust Company, Hanover

National Bank, Kinnicutt Copper, National Dairy Products and City National Bank? A No.

Q You knew at the time that they amounted to $180.45, didn't you? A Yes, sir.

Q And are your figures as you have given them here in agreement with the books of these companies? A No.

Q So, that as an accountant you undertook to change the figures in the books of these companies in order to arrive at the conclusions that you have given here in your testimony, is that right? A We didn't change the books; the accountants adjust or will modify the existing figures.

Q But to do that you actually changed them. Now, that is a fact, because you put down certain figures not in harmony with the books you are examining? A We reflect figures which are not in harmony with the books of the company.

Q The fact is, in order to arrive at the results which you have here testified to, you have taken into account figures which are not harmonious with the figures in the books of these companies? A Will you repeat that question?

Q (Question read.) A Yes, sir.

Q Can you tell us whether the books of this company, the Universal Finance Corporation, show whether these defendants or any of them, with money of the stockholders "played the market"?

Mr. Conlon: I object.

The Court: Sustain the objection.

Mr. Vickers: Those are the identical words the Prosecutor used in his opening.

Mr. Conlon: I will withdraw the objection.

A I am not in a position to say whether they "played the market," but I will say that they bought securities listed on the market and sold some of them.

Q You understand what the term "playing in the market" means, don't you? A Yes, sir.

Q You know, as an accountant, that a purchase of securities is not considered "playing in the market," isn't that right? You can answer that yes or no. A I cannot answer that yes or no. Where you purchase securities, where you borrow money thereon and where you have not sufficient equity of your own. Where you get securities for a long or a short time, waiting for an appreciating market, I would say you are "playing the market," yes, that is my opinion.

Q Isn't it a fact that these securities in question were bought outright and placed in the hands of one of the officers of the bank in the City of Newark? A That is true.

Q Will you tell us whether or not the books of this company, of the Universal Finance Corporation, as of the 31st day of December, 1928, showed a net loss? A The books of the company as of December 31st were not in the condition that they were on June 30th or September 30th.

Mr. Vickers: I ask that the answer be stricken out as not responsive.

The Court: The answer will be stricken out.

A The books of the company do not show either a profit or a loss, because they were incomplete as of December 31st.

Q You had the books of this company and you had a statement of those books as of Decem-

ber 31, 1928. I am asking you whether, according to the books of this company, the books showed a net loss. Will you answer that yes or no?

The Court: The answer is that they showed neither a profit or a loss, because they were incomplete as of that date. Is that right, Mr. Cohn?

The Witness: Yes, your Honor.

Q That is your answer, is it? A Yes, sir.

Q And as of June 30th is it or is it not a fact that the books of the company showed a surplus arising from premiums on the sale of preferred stock of $4,504.75?

Mr. Conlon: I object.

The Court: I will let you answer the question whether the books showed a surplus arising from premiums on the sale of preferred stock of $4,504.75.

Mr. Conlon: It is immaterial, I charge, whether there was a surplus or not.

The Court: I perceive that it is. The payment out of so-called surplus is no payment out of earnings of the corporation.

Mr. Vickers: The corporation law does not require dividends—

The Court: I have not passed on that question.

A There was a surplus as of June 30th.

Q As I have stated? A As you have stated.

Q Now, you give what you call the capital surplus as of September 30th and as of December 31st. Why didn't you give it as of June 30th? A We did give it. Pardon me.

Julius H. Cohn, cross.

Q No, you did not, unless I am mistaken.

Mr. Conlon: I object.

Q You give it now.

Mr. Conlon: I object. He did not give it because he was not asked.

A $3,296, after the dividend of $1,208,85. If you will add those two together you get $4,574.75.

Q So, Mr. Cohn, just now you have done exactly, according to your own figures, what apparently was done with regard to that capital surplus by the directors of this company as of June 30th?

Mr. Conlon: I object. All this witness has done is add up a couple of figures.

Mr. Vickers: No, he subtracted a couple of figures.

The Court: Do you understand the purport of the question?

The Witness: No, I don't understand the purport.

Mr. Vickers: Withdraw that question.

Q At the time that you gave the quotations of the cost of the securities held by his company and the quotations of the market as of June 30th you knew that the directors of the company by their resolution took into account the status of this company, of all its assets, as of the 14th day of June, didn't you?

Mr. Conlon: I object.

The Court: You may answer that question, but what difference does it make?

Julius H. Cohn, cross.

A I am not in a position to say what was in the minds of the directors that was not expressed. Our source of information was the resolution, which merely is in the usual form and which merely states that a dividend was declared.

Q You knew that between the 14th day of June and the 30th day of June, when you took the quotations, there had been a violent depression in the stock market, didn't you? A Yes, there had been.

Q At the time you testified on your direct examination you knew that the securities, stock purchased and held by this company, bought out of the moneys of the stockholders, had increased to a value of more than $25,000, isn't that so?

The Court: As of when?

Q Up to the 30th day of March, 1929.

(Argument.)

Mr. Vickers: He knew at that time that the stocks purchased by this company with the moneys of the stockholders, had accrued to about $25,000 or more.

The Court: As of when, the 30th day of March?

Mr. Vickers: As of such time of his testimony yesterday.

Mr. Conlon: I object.

The Court: Sustain the objection.

Mr. Vickers prays an exception to this ruling of the Court.

Exception allowed; let it be signed and sealed, and it is signed and sealed accordingly.

DANIEL J. BRENNAN,
Judge.

Julius H. Cohn, cross.

Mr. Vickers: Your Honor knows that up to March 30th of this year, within the scope of this indictment that the witness now—

The Court: Yes, I perceive what the situation is.

Q You did, in making up your statement as of the 4th day of January, 1929, and to which you have testified, know that a number of the stocks owned by this company had been sold and others purchased in their place and resold, is that right? A Yes, sir.

Q Can you tell this Court and jury whether there was a single stock which the directors of the company purchased out of the moneys of these stockholders which did not appreciate in value and was sold at a profit at the time of the sale which you considered?

Mr. Conlon: I object.

The Court: Sustain the objection.

Mr. Vickers prays an exception to this ruling of the Court.

Exception allowed; let it be signed and sealed, and it is signed and sealed accordingly.

DANIEL J. BRENNAN,
Judge.

Q In your figures given as of the total amount of earnings of this company from all sources as of the 30th of September, 1928, did you take into account the interest on loans? A No.

Q Did you take into consideration the interest on bonds as of the same date? A No.

Q Did you take into account accrued dividends declared but not paid as of September 30th? A No.

Q Can you tell us whether or not the sum of those items amounts to $1,172.21? A I haven't the data for that. I don't know.

Q Can you tell us whether as of September 30, 1928, the profit as shown by the books during the month of September on the sale of investment amounted to $2,857? A Yes, it did show that on the books.

The Court: By that you mean the security profits?

The Witness: Yes.

Q Can you tell us whether or not it is a fact that for the month of September, after taking all expenses for the month of September, the books of the company showed that there was a net profit to the corporation of $1,840.99? A There was a net profit for that month.

Q Of that amount? A The Prosecutor has my sheets there.

(The witness is given the sheets.)

A The records indicate a net profit of $1,804.99 for the month of September.

Q After deducting all expenses for that month, is that right? That was the net profit? A As per the books?

Q Yes. A Yes, sir.

Q As of the statement of December 31, 1928, interest on industrial loans amounted to $5,207.45, is that right?

Mr. Conlon: Covering what period?

Q From April 1st, the same time you testified to.

Q (Question read.) A Yes, sir.

Q As of that same time a profit for the sale of securities amounted to $12,758.93? A Yes, sir.

Q As of the same period the income from investments at that time was $2,382.78? A Yes, sir.

Q And income from other sources was $10,099.58, is that right? A That the net figure by adding the profits from the sale of securities and income from investment, interest paid on bank loans. That is not a new figure, that is a total figure.

Q In order to arrive at the loss which I gave you you had to take into account the figure which you estimated for revaluation of securities, is that right? A Yes, sir.

Q That account, as you testified to yesterday, depends on the daily fluctuation of the market? A Yes, sir.

Q And whether or not that is a loss depends upon an event yet to occur, isn't that so? A The actual sale?

Q Yes. A Yes.

Q If that was so, then in order to arrive at what you call your net figure depends entirely upon whether that revaluation was accurate or whether in fact at that time for the period there should have been added an additional income, isn't that so?

Mr. Conlon: I do not understand that question.

The Court: Neither do I.

Julius H. Cohn, cross.

Q There was a revaluation to arrive at this figure of $10,099.58? A Yes, sir.

Q Now, whether or not your revaluation reflects the true value depends on whether or not at the eventual sale there was a profit or not, doesn't it? A It depends on whether at an actual sale a different price was realized other than that where provided as of January 4th.

Q That is right. A Yes, sir.

By the Court.

Q Your revaluation is placed as of what the market value is as of the time of the examination? A As of the time of the date of the condition requested, which is January 4th.

By Mr. Vickers.

Q In the revaluation which you then made did you then include anything for the accrued interest of the particular stocks that you revalued? A We did accrue the interest as of January 4, 1929, only for that period.

Q That is a figure in addition to the figures I have already given you that amounts to $1,867.35, is that right? Page 27. A Yes, sir.

Q Is it a fact that as an accountant you allow for that accrued interest because of the high character of the stocks in question? A No.

Q It is not? A No.

Q If it had been fly-by-night stocks would you have allowed accrued interest on them? A If the stocks were high class?

Q Sure. A Yes. They were stocks of high character.

By the Court.

Q You apportioned your interest accrued on

the dividend records of the stock? A No, we do not accrue proportionately dividends, because the dividend has no accrual until the very day when it is declared and becomes a propriety right of the recipient.

By Mr. Vickers.

Q I am talking of the interest on an entirely different theory as applicable to that. A Yes.

Q You have accrued the interest because of the high character of the stocks in question, isn't that true? A There is no interest on stocks. On bonds and on notes.

Q Does your interest item here apply to accrued interest on loans? A Yes, on industrial chattel loans.

Q On December 31, 1928, you did what you have testified, you omitted on June 30th, isn't that right? A Yes.

Q You did in December what you omitted to do on September 30th, isn't that right? A Yes, sir.

Q You have testified that as of the 4th day of January, if I have my date correct, the capital value of the shares was $10.80, is that right? A The book value per share.

Q You have spoken about a liquidative value of 65 per cent. that means 65 per cent. of the money paid in, is that right? A Yes, sir.

Q That was based on the theory of something that never happened, isn't that right? A In response to the question?

Q Yes. A Yes.

Q In your figures of the capital value at $10.80 have you made any allowance for the value of the sale of the capital stock? A I don't understand the question.

Q It costs money to sell stock and every company recognizes that fact, isn't that so?

Mr. Conlon: I object. It costs money to sell this stock.

Mr. Vickers: Certainly, I want to find out whether this is legitimate and you are objecting to my doing it.

Q (Question read.) It costs nothing to sell stock and you as an accountant recognize that as a fact, isn't that so? A Yes.

Q As an accountant you recognize the propriety of putting the sales cost of stock as a preferred charge covering a certain period according to the character of the business and in the discretion of the directors, isn't that right? A Yes.

Q And in this instance the books of this company show that there was a deferred charge for the sales cost of this preferred stock, is that right? A The books of the company showed a deferred charge for the financing cost on that stock which was as yet in the subscription status. The procedure was, which is considered good, that when the subscription was consummated and the subscribers became stockholders, at that time the company's practice was to charge the cost of financing against the surplus which arose out of the sale of this stock in excess of $10.

Q And that again, so far as your explanation goes, depends upon the particular principle of accountancy under which you work, isn't that right?

Mr. Conlon: I object.

The Court: He may answer it.

Q Isn't that right? A Yes, sir.

Q Under the contract in this case the deferred charge was consonant with the terms of the contract which was before you at the time you made your investigation, isn't that so?

Mr. Conlon: I object.

The Court: Sustain the objection.

Mr. Vickers: Exception prayed.

Exception signed and sealed accordingly.

DANIEL J. BRENNAN,
Judge.

Q So far as the deferred charges were concerned they were set out in full in the books of the company. You found them there? A They were set out and then written off; they were eliminated from the books.

Q By whom? A By Haskins & Sells upon the completion of the sale of the stock in each instance.

Q What you mean is that both you and Haskins & Sells, so far as you could ascertain, adopted the theory you have just given us of writing off until the stock sale was completed, is that right? A Not writing off. Until the stock sale was completed.

Q In other words, if there was a deferred charge there on the books of the company on stock subscriptions which had not yet been completed you wrote that off or disallowed it, that is true? A For the purpose of making this computation?

Q Yes. A Yes.

Q In other words, that is where you differed with the set-up in the books? A We did not disturb the books on that item.

Q I mean, you differed in your computation because the books charged off, although the subscription had not been complete, you naturally deferred the charge of all commissions?

Mr. Conlon: I object to that. That is not clear to me.

The Court: There was some difference addressed to the form of your question between the handling of the item of the deferred charges, is that right?

Mr. Vickers: And it was a matter of accountancy opinion, that is what I want to bring out by this witness, and he had a different theory and Haskins & Sells had a different theory. It is an accountancy opinion.

The Witness: We are in accord with Haskins & Sells on their treatment of the deferred commissions. My answer as to the liquidating value of this stock did not take into consideration any liquidating value or tangible value for these deferred commissions.

Q Yes, they were losses in your liquidating value, isn't that right? A They were losses in the liquidating value, yes, for that one purpose.

Q Except for liquidating value there, both by you and Haskins & Sells, they are not treated as losses but only certain portions allowed as a deferred charge as there should be, isn't that right? A They are temporarily kept on the books until there is the completion of the stock subscription.

Julius H. Cohn, cross.

By the Court.

Q What happens to them then as a matter of accountancy? Are they carried as an asset? A No, they have been charged as a premium out of the sale of preferred stock and the difference is left as the capital surplus.

Q Suppose there isn't any surplus? A There is, because the amount of commissions never has equalled the amount of capital surplus arising out of the sale of the stock. There was always sufficient financial surplus to recoup the loss.

By Mr. Vickers.

Q What that amounts to is this: That there was always a surplus over and above the par value of the stock? A Yes, sir.

Q Along your line of accountancy you wrote off the commissions as the transactions were completed, is that right? A I did not disturb the Haskins & Sells or the books of the company in that respect.

Q I didn't ask you that, I asked you whether that is a fact, that as the transaction of the stock subscription was completed you wrote off the commission, is that right? A We wrote the commission off, yes.

Q And where the stock transaction had not yet been completed you carried it along as a deferred charge? A Yes.

Q Now, is it or is it not a fact that there was expressed according to the business methods of today that the cost of the sale of stock is carried on and amortized for a period of years as a deferred charge? A It may be.

Re-direct examination by Mr. Conlon.

Q You stated that you did not take into consideration the accrued interest in figuring your income up to June 30th? A Yes, sir.

Q You also stated that if you did figure that it would make an increase of 65 per cent. in the income up to June 30th? A Yes, sir.

Q How much was that accrued interest in dollars and cents? A About $135.

Q How much were the accrued dividends in dollars and cents? A $180 and some odd cents.

Q Have you—if you have figured those would there have appeared on the books of account instead of a loss? A No.

Mr. Vickers: I object to that on the ground that it does not come within the indictment.

The Court: Sustain the objection.

Q Were there any other items you did not figure? A The value of rights.

Q Do you know what the value of those rights was? A I don't know at this moment.

Q Do you know approximately? A I haven't any idea.

The Court: I will sustain the objection to that in view of the fact that you haven't taken that into consideration.

Q Is that the rights Colonel Vickers asked you if they were worth $130.50? A No, that was the dividend.

Q Of course that accrued interest was credited on the books as it was paid? A Yes, sir.

Q In other words that would appear in the following quarter ending September 30th? A Yes, sir.

Q And interest accruing on June 30th would appear in the following quarter and all accrued interest was credited as of December 31st? A Yes, sir.

Q Was this income subject to any charges that you did not make, any accrual charges you did not make as of June 30th? A Yes, sir.

Q Which is what? A In our analysis of the loans there should have been some provision for a possible bad debt.

Q Did you make any such provision? A No.

Q In other words you took it that every loan would be paid in full? A One hundred per cent.

Q In case there should have been some small expense items— A That would not run into a lot of money, but there were some expense items that occurred in June which the bills or checks in payment therefor were not reflected until July or August.

Q Was there anything else? Do you know anything about the agreement to pay subscribers four per cent. on their unpaid subscriptions? A Yes, sir.

Q Was that reflected in your account?

Mr. Vickers: I object to that question unless the witness knows the conditions. That involves a question of law and your Honor would have to study the exhibit.

The Court: The testimony so far in the record is they would pay interest at the rate of four per cent. on all subscriptions paid for in full on the installment plan when paid.

Mr. Vickers: According to the terms of the subscription.

Mr. Conlon: Withdraw the question.

The Court: The question is pertinent as to whether some inspection was made in view of the undertaking.

Mr. Conlon: I will withdraw that question.

Q Did you make any provision in your profit and loss statement for the charging of interest at four per cent. to any of the subscribers of stock who had not paid for their stock? A Yes, sir, $400. Interest on stock subscription collections, $400.

Q I am correct in this, am I, that the interest then received on notes from the small loan business up to June 30th was $41.53. Is that right? A Yes, sir.

Q And figuring the accrued interest, that is the interest that had been earned up to June 30th but was not yet due, that was $119? A $135.

Q So, the total interest paid and interest accrued was something in the neighborhood of $175 up to June 30th? A Yes, sir.

Re-cross examination by Mr. Vickers.

Q That interest was computable to a mill, wasn't it, the accrued interest on the books of the company? A It was, but we were making this examination in December and we considered the item so small that we approximated one-half per cent. We have gone into that figure quite carefully with the personel of the company and it is considered a half month's interest there is ample.

Q Did you find in December when you made this examination that it was computable to a mill? Is that right? A It was, yes.

Q The elimination of that, according to your own figures, amounts to 65 per cent. more than you allowed as income, isn't that right? A Yes, sir.

Q Will you say that the items which you omitted, concerning which I asked you and concerning which the Prosecutor re-examined you, did not amount in their fair computation to $2,046.59 as of June 30th, 1928? A I cannot answer that without the detail.

Q The four items I gave you before and which you have taken into consideration in that testimony and taken into consideration in the testimony in re-direct by the Prosecutor, would you say that the fair value of those amounts was not $2,046.59? A I couldn't say without the detailed information.

Q You have before you a list of the securities on which you aproximated losses and on which you say that you allowed no accrued interest as of these different periods, is that right? A Yes, sir.

Q I show you this photostat and I ask you whether that is a correct list of the securities which you had in your calculations at the time. That is a correct list of the securities? A That is a correct list of the securities, yes, sir, as of June 30th.

Mr. Vickers: I ask to have this marked for identification.

(Same is marked D. 18 for identification.)

Arthur D. Clark, direct.

Re-direct examination by Mr. Conlon.

Q This 65 per cent. is the same item which you say amounted to $119? A I say amounts to $135.

Q You called it $135 and Colonel Vickers called it 65 per cent.? A That's it.

ARTHUR D. CLARK, sworn on behalf of the State.

Direct examination by Mr. Conlon.

Q What is your business? A Radio business.

Q With what station were you connected in the year 1928? A WABC.

Q Your broadcasting station is where? A The transformer is in Richmond Hill and the studio is in Steinway Hall.

Q During what period of 1928 were you connected with WABC? A Practically the whole year, up to the time we sold the station on December 27th.

Q December 27, 1928? A Yes, sir.

Q During that time what was your position with the station? A I was employed as manager.

Q As manager what were your duties? A General supervision of the station, the programs, technical end, commercial stuff, and so forth.

Q Do you remember the Public Service Finance Corporation or the Universal Finance Corporation broadcasting over your station? A I do.

Q When did it begin to broadcast? A I cannot give you the exact date.

Q Approximately? A The middle of the spring some time. I should say halfway between the first of the year and the spring. I can't give you the dates at all.

Q Whom did you see in reference to their broadcasting, or who saw you in reference to their broadcasting? A Mr. Hollenbaugh.

Q Dale D. Hollenbaugh? A Yes, and Mr. Edwards, and from time to time other members of the organization.

Q Do you remember who they were? A Mr. Evans, Mr. Cawthorne, but our principal contact was with Mr. Edwards and Mr. Hollenbaugh.

Q They broadcast over your station how often? How many times a week? A They originally started with a two to three minute talk daily in connection with the weather reports subsequent to that.

Q You say they started off with weather reports? A They started off with two to three minute talks daily with reference to weather reports and subsequent to that they got into a musical program.

Q Do you remember what they used to call it? A Musical Portfolio.

Q How many times a week did they broadcast? A They ran that three times a week every other day, and in addition they gave brief talks for a minute and a half on the other days.

Q You are familiar with the nature of their talks? A Oh, yes.

Q What was the general purport of their talks?

Mr. Vickers: That is objected to on the ground the talks themselves have been offered in evidence.

Mr. Conlon: Withdraw the question.

Q Do you know the substance of their talks? A Yes. I couldn't give it to you verbatim.

Q Did you have any conversation with Hollenbaugh, Edwards, or any other members of this company, as to the manner of their conversation over the radio? A We had a conversation as to the company as to the whole proposition.

Q What was your purpose in having that talk? A To find out whether it was a substantial thing that we wanted to put on the air and a responsible concern.

Q Upon your decision in that respect, what happened, whether or not you would allow them to go on the air over your station? A Yes.

Q You say you knew Evans? A I met Evans two or three times, yes.

Q I show you a photostatic copy of a letter dated March 29, 1928, marked S-10, and I ask you if you have seen that letter before? A Yes, sir.

Q When and where did you see it? A That was a letter given me by Mr. Hollenbaugh backing up the statement he gave me which I asked him to give to me either in a letter written to me or a letter written to him.

Q What statement did he make before this letter was delivered? A That the proper authorities of New Jersey, a member of the Banking Department, or Attorney General's Staff, connected with the company, knew of his practice and operation.

Q After you had that conversation with him, what if anything did you ask him to do? A Produce letters.

Q From whom? A From the proper people, that is, Mr. Evans from the Attorney General's Office.

Q Then this letter was produced by Mr. Hollenbaugh? A Yes, Mr. Hollenbaugh produced this letter.

Q And it was shown to you? A Yes, delivered to me and put in my files.

Q Before you received that letter had you allowed them to broadcast? A I think there were some broadcasts, yes. I know the negotiations extended over a month, all negotiations as to terms and so on, and then the credit references of the company and actual business.

Q What do you mean by references? A Matters of this kind, checking up.

Q At this point pending these negotiations this letter was delivered to you? A During some point in those negotiations the letter was delivered to me.

Q Then you allowed them to continue to broadcast? A Correct.

Q Was your decision in allowing them to continue to broadcast affected by the delivery to you of that letter by Mr. Hollenbaugh? A Very materially, as evidencing facts that he or his concern had given.

Q Did you know then that the man who signed that letter, "Dewi T. Evans, Examiner," was treasurer of the company whose stock was being offered, that is, sold over the radio? A I knew he was connected with the company.

Q Did you know he was treasurer? A No, sir, I don't believe I did. I do not know that I made any point of it; I may have.

Q Was anything said to you in reference to whether or not the department in which Mr.

Evans was employed authorized the writing of that letter?

Mr. Vickers: That is objected to as speculative and a conclusion on his part.

The Court: He can say whether or not any representation was made to him by these defendants or anyone of them.

Sustain the objection, for the record.

Q Was there any representation made to you by Edwards or Hollenbaugh or any other members of this company as to whether or not that letter had been authorized by the Attorney General of the State of New Jersey, or by any of his assistants?

Mr. Vickers: Objected to as wholly immaterial whether it was or not. The letter speaks for itself and can be no broader than its contents.

The Court: Objection overruled.

Defendants' counsel prays an exception to this ruling of the Court.

Exception allowed; let it be sealed; and it is signed and sealed accordingly.

DANIEL J. BRENNAN,
Judge.

A I don't know whether there was any direct representation. We accepted the letter at its face value as an official document coming from the Attorney General's Office. We took it exactly as given.

Q I show you Exhibit S. 11. Is that a letter received by you? A Yes, sir.

Q Do you remember whether that was received in the mail? A That came in in the mail.

Q Now, before this letter was delivered to you what was said to you, if anything, by any of the officers of the company as to the connection with the company with the Department of Banking & Insurance? A Just that the methods they were using, that is, this method of broadcasting securities, had been followed out over in New Jersey and had been under the scrutiny of the Banking Department. That they knew of the company and were thoroughly cognizant of the plans they proposed and approved, and there was no objection to their pursuing it over our station.

Q Did you have anything to do, as far as your company was concerned, about the approval or disapproval of your broadcasters? A Yes.

Q It was in the process of your duty that you made these inquiries? A Correct.

Q Do you know whether or not Hollenbaugh ever broadcast over Station WABC, he personally? A You mean gave the talks?

Q Yes. A Oh, yes.

Q What name did he use? A I understand that he used the name Dale Davis.

Q Did you ever hear him broadcast? A Yes, two or three times.

Q Do you know whether or not Edwards ever broadcast? A Yes.

Q Do you know what name he used? A No.

Q Do you know whether or not he used a name?

Mr. Vickers: I object as leading.

Q Do you know whether or not Evans ever broadcast over WABC? A Yes, I think he

gave one or two talks. I am not sure. I couldn't be certain of that.

Q Do you know what name he used? A No.

Q Do you know Cawthorne or Perry? A I know Mr. Cawthorne.

Q Did either one of them ever broadcast? A I believe they did.

Q Do you know what name was used? A No, sir.

Cross examination by Mr. Vickers.

Q Mr. Hollenbaugh was to your knowledge a professional broadcaster? A I knew he had been that.

Q And put on musical programs of various artists and had a name as such; that is right? A Correct.

Q That name was Dale Davis? A Yes, sir.

Q Part of his real name, the first two names, Dale Davis Hollenbaugh being his name? A I know that now. I didn't know that at the time.

Q Of course, that is customary, is it not, in broadcasting, not only for a person to use what might be termed a stage name, but to use several of them in different appearances at the different broadcastings; isn't that so? A Quite common practice.

Q You give them a name sometimes for the occasion? A Yes.

Q In accordance with your duties as manager of that station, and having the responsibility of accepting or rejecting material to be broadcast in this manner, you made quite an extended investigation, didn't you? A Yes, we used the usual commercial resorts.

Q In addition to the inquiries you have told us you went to what is known as the Better

Business Bureau in New York City; isn't that right? A Yes.

Q With whom did you come in contact with there? A Mr. Collis.

Q Known to you in his official capacity with the Better Business Bureau? A Yes.

Q When you made an inquiry you made it because of the recognized supervision of the Better Business Bureau over matters concerning commerce, trade and such transactions as were involved in these radio talks? A I went down there following a direct telephone call from them.

Q You mean Mr. Collis sent for you? A He asked for information from me and I followed him up with a call, and I asked him to get some information, if there was anything he could find.

Q Did you know as a matter of fact, and did you make it a part of your investigation to ascertain that the proposed radio talk had been submitted to him for his approval? A I understood he had seen some.

Q And censored them in some respects, is that right? A I couldn't swear to that.

Q You made it your business to ascertain that the matter to be broadcast over your station at least did not meet with the disapproval of the Better Business Bureau? A I told them that if they disapproved at any time we would take the account off.

Q Put them off the air; is that right? A Correct.

Q Up to December 21, 1928, you had no complaint whatever from any radio talk over your station by any of these persons that you have named? A We had, as I say, an alleged in-

quiry from the Better Business Bureau. They produced nothing definite, or we would have taken them off.

Q From thence on to the 21st day of December you recall no complaints of the matter being broadcast over your station? A Correct. Nothing I can recall.

Q And from time to time during this period and while these gentlemen were on the air you kept track of the matter being broadcast? A Hardly so; no. We accepted them. They had the original lease with the terms and subject-matter of their talks, and after their talks were in operation we rather took our hands off.

Q In considering the propriety of the matter which was to be broadcast did you take into account the subject of industrial banking, the term "industrial banking" used in the broadcasting? A Not at all.

Q That is an accepted term in New York City, isn't it? A I wouldn't say that. I do not know. I have no knowledge of it.

Q Did you take that up with Mr. Collis of the Better Business Bureau? A I do not recall having any talk about that.

Q Can you tell us whether or not the Better Business Bureau, or Mr. Collis, or anyone else, kept track of the broadcasting from time to time?

Mr. Conlon: If you know.

A I don't know.

Q No complaint came to you from there? A No complaint came to me, no.

Arthur D. Clark, re-direct.

Re-direct examination by Mr. Conlon.

Q When you say that people broadcasting over the radio used a stage name you mean performers over the radio? A Yes, but in connection with musical programs, and such.

Q Hollenbaugh and Edwards were not performers, were they? A Well, we limit all that stuff as one and the same.

By the Court.

Q You call them all performers? A Yes. We do not differentiate between those things.

By Mr. Conlon.

Q Did you know that these men who were broadcasting were stockholders in the company in which they were selling stock? A Yes.

Q Did they so state on the radio? A I don't recall.

Q They did not use their own names, did they? A I couldn't say.

Q Do you know whether Mr. Collis made any specific objections to the subject-matter of these radio talks? A Not that I recall. I think there were one or two objections he made.

Q You say "not that you recall"? A Not that I recall.

Q Do you remember his making any objections? A No, I think Collis and I talked more along the line of the continuance of the thing in toto, whether we would take it off or let it run, and I took it by that broad general line of whether the thing was a reliable account.

Q Do you remember Mr. Collis testifying before the Davis Committee?

Mr. Vickers: I object.

A Yes.

Q When did you testify there?

Mr. Vickers: That is objected to as immaterial. Such testimony as this cannot be relevant.

A I cannot give you the exact date.

Q About when? A The—in December after Christmas. It was about the 27th or 28th.

Q Was your recollection of this thing any better then than it is now? A Oh, yes; very much better.

Q If I should show you a transcript of an answer you gave in response to a question before the Davis Committee, do you think it might refresh your memory as to the subject-matter about which I am questioning you?

Mr. Vickers: I object.

The Court: Sustain the objection.

Mr. Conlon: I think I can show the witness a memorandum that will refresh his recollection.

The Court: If the substance is not admissible, neither is the shadow.

Q Please try to remember now what if any specific objections Mr. Collis made to the subject-matter of the talks of the Universal Finance Corporation?

Mr. Vickers: I object, unless he refers to the talks in evidence.

Mr. Conlon: I understand that all the talks are in evidence.

Mr. Vickers: No.

A There was, as I recall, an objection, but I cannot for the life of me give the details of it. There were several objections to it by several questions he asked Hollenbaugh about the connection with the piece of material, about some printing on a piece of literature, for one thing, the payment of dividends and whether that directly concerned the books I cannot say at this time.

Q But you think now there was some talk between Collis and Hollenbaugh on that subject? A Yes, on some talks we sent to Collis, that I know.

Re-cross examination by Mr. Vickers.

Q During the alleged conversation that you have testified to between Hollenbaugh and Collis, were you present? A Yes.

Q When? A At the first one.

Q Was there any objection to anything that Mr. Collis made that Mr. Hollenbaugh agreed to change, eliminate according to the wishes of the Better Business Bureau, is that right? A Yes, they had quite an argument about one thing, as I recall, but finally Mr. Hollenbaugh acceded to Mr. Collis on all the points raised at that time.

Q Mr. Collis objected to it and Mr. Hollenbaugh was satisfied?

Mr. Conlon: That is not the answer.

Q Hollenbaugh agreed to make any change in the radio talk to which Mr. Collis, representing the Better Business Bureau, objected. That is a fact, is it not? A Substantially, yes.

Re-direct examination by Mr. Conlon.

Q If he had not done that you would have put him off the air? A I told Collis that.

Re-cross examination by Mr. Vickers.

Q They remained on the air until the 21st of December; is that right? A Yes, sir.

Q For two or three times a week? A Three times a week.

(At one o'clock P. M. the Court takes a recess for one hour.)

After Recess.

Mr. Conlon: The State rests.

(The jury retires.)

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MOTION FOR ACQUITTAL.

Mr. Hobart: On behalf of the defendants whom I represent I desire to move for an acquittal on the State's case and on the following grounds:

1. The evidence is insufficient to prove any conspiracy to which these defendants were a party.

2. If any conspiracy is proved it is not the conspiracy alleged in the indictment.

3. The evidence is insufficient to prove any of the overt acts alleged in the indictment.

4. The evidence is insufficient to prove that any of the defendants, including those I represent, were guilty of the charge alleged in the indictment beyond a reasonable doubt.

(Argument.)

Mr. Vickers: I desire to make a similar motion on behalf of the other defendants.

Motion denied.

Counsel for defendants pray an exception to this ruling of the Court.

Exception allowed. Let it be sealed and it is signed and sealed accordingly.

DANIEL J. BRENNAN,
Judge.

New Jersey State Library

Mr. Vickers opens for the defendant.

Mr. Vickers: Now, may we call some character witnesses?

The Court: Do you want to open for your defendants, Mr. Hobart, or does Colonel Vickers' opening stand for you?

Mr. Hobart: Colonel Vickers' opening applies to all the defendants.

The Court: Is there any objection to introducing character witnesses?

Mr. Conlon: No, your Honor.

CHARLES N. FOWLER, sworn in behalf of the defendants.

Direct examination by Mr. Hobart.

Q Are you a resident of Union County, New Jersey? A Of Elizabeth, yes.

Q May I ask your age? A I am perfectly willing.

Q What is it? A Born November 2, 1852.

Q Were you for many years a Congressman from the District of which Elizabeth forms a part? A Sixteen.

Q Are you acquainted with the defendant, Mr. Cawthorne, the gentleman sitting here (indicating)? A Yes, sir.

Q How long have you known him personally? A My recollection is that I employed him in 1889 as an office boy, and I think he was with me about three years.

Q Has he lived in your neighborhood for a number of years? A I have been right in touch with him ever since.

Charles N. Fowler, cross.

Q For nearly forty years? A Yes, it seems to be all of that.

Q Do you know his reputation generally in the community? A I think so.

Q What is his reputation for business integrity and as a good citizen?

Mr. Conlon: I object. I ask that the witness' answer be confined to a description of whether or not it is good or bad.

The Court: You may answer yes or no.

Q Do you know his reputation? A Yes.

Q What is it, good or bad? A Good.

Cross examination by Mr. Conlon.

Q Have you had any business transactions with Mr. Cawthorne within the last few years? A I used to have some business with him when he was paying teller in the Union County Bank.

Q When was that? A Well, let me see. I will have to ask when he lived there. It was during the time that he was there.

Q A year or more ago?

By the Court.

Q How many years ago was it? A I should think about twelve years ago, fourteen, along there about that time. I would have to check it up, he was there as paying teller for quite a number of years.

CHARLES C. COLEMAN, sworn in behalf of the defendants.

Direct examination by Mr. Hobart.

Q What is your occupation? A Banker.

Q In what bank? A I am secretary of the Union County Trust Company of Elizabeth, New Jersey.

Q Do you know Mr. Cawthorne, one of the defendants? A I met Mr. Cawthorne in December, 1898. We were associated in this bank and were up until the year 1917.

Q Have you been acquainted with him from that time on until the present? A Yes. We used to be very intimate, our families, up to that period, and Mr. Cawthorne went to Brooklyn and I have seen him less frequently.

Q Do you know his reputation in the community in which he lives? A Yes.

Q Is it good or bad?

Mr. Conlon: Have you had any business transactions with him since 1917?

The Witness: No.

By Mr. Conlon.

Q Where has he lived since that time? A In 1917 he moved to Brooklyn.

Q You live where? A Elizabeth.

Q He lived in Brooklyn since 1917? A After all that period he moved to Brooklyn, I think. I am quite sure of that, but I think he removed from Newark to Brooklyn.

Q Your contact with him since 1917 has been purely social? A Yes.

Q You visited his home? A Not recently.

Q Has he visited your home? A Yes.

Q Do you know anything about his business activities in the last five years? A I do not.

Q Did you hear anything about it? A I heard indirectly of this recent trouble. I knew nothing about the charges only what I learned here today more than I knew at any time.

Q During the last five years you have heard nothing indirectly about Mr. Cawthorne? A I haven't heard.

Q You haven't discussed him or his character with anybody? A No, I have had no occasion to.

Mr. Conlon: I object to this testimony.

The Court: Sustain the objection.

Mr. Hobart: The mere fact the witness hasn't heard anything derogatory about Mr. Cawthorne does not disqualify him.

The Court: If you want to interrogate him on anything as to his character, he may be asked anything in regard to that. The testimony goes to the repute of the individual in the community in which he resides. Up to 1917 he says he knew him in Elizabeth, but he knows nothing of his reputation where he now lives and he cannot know anything, because his contacts are purely social since 1917.

By Mr. Hobart.

Q To what extent have you been in contact, either socially or otherwise with Mr. Cawthorne and with Mr. Cawthorne's friends and associates? A I do not think I have seen Mr. Cawthorne more than twice within the last two or three years.

Q How about his friends and associates? A Our wives are interested in a literary club, and they belong to that, and of course we hear of the Cawthornes through that friendship.

Q Do you know his reputation among those people?

Mr. Conlon: Among what people?

Q His friends and associates.

Mr. Conlon: I object.

The Court: Sustain the objection.

Defendants' counsel prays an exception to this ruling of the Court.

Exception allowed; let it be sealed; and it is signed and sealed accordingly.

DANIEL J. BRENNAN,
Judge.

SIDNEY W. ELDRIDGE, sworn in behalf of the defendants.

Direct examination by Mr. Vickers.

Q Where do you live? A Elizabeth.

Q What is your occupation or profession? A Lawyer.

Q How long have you resided in Elizabeth? A All my life.

Q Are you generally acquainted in Union County? A Yes, pretty well acquainted.

Q Are you a member of the Assembly from that District? A Yes, from Union County.

Q Do you know Alexander G. Edwards, the defendant in this case? A Yes, sir.

Sidney W. Eldridge, cross.

Q How long have you known him? A It must be ten or twelve years.

Q Do you know his friends and associates in Union County? A I used to know a great many of them.

Q Among his friends and associates, in the neighborhood in which he lives, do you know his reputation for honesty, and as a law-abiding citizen? A I do.

Q Is it good or bad? A Good.

Cross examination by Mr. Conlon.

Q Have you had any business transactions with him, Mr. Eldridge? A A great many.

Mr. Vickers: I object. He probably had, but business transactions are not a criterion of reputation.

The Court: I think that is true, but it may be one standard of reputation.

Mr. Conlon: It also goes to the weight of his testimony.

The Court: I think that it is not so much business reputation as business and social contact among the people with whom he moved. I will sustain the objection.

Q You say you have discussed Mr. Edwards with friends, or just discussed his reputation and character? A Well, I cannot say that he has been spoken of, in my presence. I have spoken of him.

Q That is the way you formed your opinion as to his reputation? A Yes.

Q Were those persons with whom you spoke friends of yours in a social way or in business, or both? A Well, a little bit of both, I guess.

THEODORE J. GOE, sworn in behalf of the defendants.

Direct examination by Mr. Vickers.

Q Where do you live, Mr. Goe? A Roselle, New Jersey.

Q How long have you lived there? A Fifteen years.

Q Do you know Dale D. Hollenbaugh, the defendant here? A Yes, sir.

Q How long have you known him? A Five or six years.

Q What is your business? A I am advertising counsellor.

Q Where are you in business? A My headquarters are Roselle, New Jersey, but I do business all over the country.

Q Do you know the friends and associates of Dale Davis Hollenbaugh in the community in which he lives? A He was my next door neighbor.

Q You know the people around there? A Yes.

Q You are all neighbors together, is that right? A Yes.

Q Among those persons, in the community in which you live, do you know the reputation of Dale Davis Hollenbaugh for integrity and as a law abiding citizen? A Yes.

Q Is it good or bad? A Good.

Mr. Conlon: No questions.

(Cross examination waived.)

GUY H. NOBLE, sworn in behalf of the defendants.

Direct examination by Mr. Vickers.

Q Where do you live? A Westfield, New Jersey.

Q How long have you lived in Westfield? A About eight years.

Q What is your business or occupation? A I am a manufacturer's agent, representing several concerns who manufacture building material.

Q Do you know Dale Davis Hollenbaugh? A Yes.

Q Do you know where he resides? A Yes.

Q Do you know associates and friends of Dale Davis Hollenbaugh in the community in which he lives? A Yes, very many of them.

Q Do you know the reputation of Dale Davis Hollenbaugh in the community in which he lives, and among his friends and associates, for integrity and as a law-abiding citizen? A Yes, sir.

Q Is it good or bad? A Good.

Cross examination by Mr. Conlon.

Q You live in Westfield? A Yes, sir.

Q Where does Mr. Hollenbaugh live? A In Roselle.

Q How often have you seen him during the last year? A Well, every other day we are in contact, back and forth, and our families. I have relatives in Roselle.

Q He is a friend of yours? A Yes.

Mr. Conlon: I have no objection.

Re-direct examination by Mr. Vickers.

Q Is it good or bad? A Good.

WILLIAM C. TOONEY, sworn in behalf of the defendants.

Direct examination by Mr. Vickers.

Q Where do you reside, Mr. Tooney? A In Brooklyn, New York.

Q Are you acquainted with the defendant Mr. Charles Perry? A Yes, sir.

Q How long have you known him? A Close on to eleven years.

Q Are you acquainted with his friends and associates in the community in which he lives? A Yes, sir.

Q Mr. Perry lives in Brooklyn, I believe? A Yes.

Q What is your occupation, Mr. Tooney? A Broker.

Q At what point? A 20 West 43rd street, New York.

Q Do you know Mr. Perry's reputation for business integrity, and as a good citizen, in the community in which he lives, among his friends and associates? A Yes.

Q Is it good or bad? A Good.

Cross examination by Mr. Conlon.

Q He is a very good friend of yours, is he, Mr. Tooney? A Yes.

OWEN W. KITE, sworn in behalf of the defendants.

Direct examination by Mr. Vickers.

Q Mr. Kite, where do you live? A Trenton, New Jersey.

Owen W. Kite, cross.

Q How long have you lived in Trenton? A All my life.

Q What is your business or occupation? A Deputy State Comptroller.

Q How long have you been in the Comptroller's Office of the State of New Jersey? A Thirty-four or thirty-five years.

Q Do you know Dewi T. Evans? A Yes, sir.

Q How long have you known him? A Eighteen or nineteen years.

Q Do you know where he resides? A Yes, sir; I have lived within a half a block of him.

Q In the City of Trenton? A In the City of Trenton.

Q Do you know his friends and associates in the City of Trenton? A I do.

Q Do you know the reputation of Dewi T. Evans among his friends and associates, in Trenton, for integrity and as a law-abiding citizen? A Yes.

Q Is it good or bad? A Good.

Cross examination by Mr. Conlon.

Q Mr. Evans used to work in the Comptroller's Office? A Yes.

Q He was transferred from there to the Attorney General's Department? A Yes, sir.

Q And he was in the Civil Service? A Yes, sir.

Q Did you ever hear anything about him that was contrary to his good reputation? A Never.

Q Do you know under what circumstances he resigned from his position in the Attorney General's Office? A No, I do not.

Q You do not? A No.

GEORGE R. SWAINE, sworn in behalf of the defendants.

Direct examination by Mr. Vickers.

Q Mr. Swaine, where do you live? A Newark, New Jersey.

Q Do you know Dewi T. Evans? A I do.

Q How long have you known him? A Eight or nine years.

Q Do you know where he lives? A Trenton, yes, sir.

Q Do you know his friends and associates in the community where he lives? A Yes, sir.

Q Do you know the reputation of Dewi T. Evans, among his associates, in the community in which he lives, for integrity, and as a law-abiding citizen? Yes, sir.

Q Is it good or bad? A Good.

Cross examination by Mr. Conlon.

Q Where does Mr. Evans live? A Trenton.

Q You live in Newark? A Yes, sir.

Q Do you spend any time in Trenton? A Yes, sir.

Q Ever visited his home? A No, sir.

Q Have you any knowledge of his reputation, in the community in which he lives, in Trenton? A Among his associates.

Q I am asking you whether you know his reputation among the people among whom he lives in Trenton? A That is hard to say.

Q Do you know where he lives, in Trenton? A No, I do not.

Q When you say his associates you mean his business associates, is that correct? A Yes, sir.

Q And when you are testifying to his reputation, you are testifying to his reputation as you

have gleaned it from his business associates? A Yes, sir.

Q Your business is what? A I am manager of the Interstate Corporation Investments.

Q That is a concern that buys and sells stocks? A We are the security end of the Interstate Trust Company.

Q Have you dealt in stocks with Mr. Evans? A Yes, sir.

Q Did he buy and sell stocks to your concern? A Yes, sir.

Re-direct examination by Mr. Vickers.

Q Now, answer the question.

The Court: He has answered it, "Good."

Mr. Vickers: Then I am afraid I missed it.

(At this point the Court adjourned to Friday, May 31, 1929, at 10:00 A. M.)

ESSEX COUNTY COURT OF QUARTER SESSIONS.

Friday, May 31, 1929.

FOURTH DAY.

Continued pursuant to adjournment.

Present, counsel as before stated.

RICHARD J. FITZMAURICE, sworn on behalf of the defendants.

Direct examination by Mr. Vickers.

Q Where do you live? A 210 Haywood avenue, Orange.

Q How long have you lived in the State of New Jersey? A All my life.

Q What is your occupation or profession, Mr. Fitzmaurice? A I am a lawyer.

Q How long have you been a member of the bar of the State of New Jersey? A Nine years.

Q Do you hold, in your community, any official position, Mr. Fitzmaurice? A Director of Revenue and Finance in Orange.

Q As a member of the City Commission of your city, do you also act as Mayor of the City? A In the absence of the Mayor, under the Act, I am supposed to be Acting Mayor.

Q With what financial interests are you connected? A I am director and officer and counsel for four or five.

Q Tell us what they are? A The Trust Company of Orange, Fidelity Title & Guarantee Mortgage Co., the Securities Company of the Oranges, American Bankers Investment Co., Bulwark Building and Loan and the others are not financial institutions.

Q With what other, if any, business enterprises are you connected as an officer or counsel, Mr. Fitzmaurice? A Well, what do you mean, my private business?

Q No, corporations in which you are a director. A I am a director in three or four private concerns.

Q Doing business in the State of New Jersey? A All of them.

Q Now, you are one of the directors of the Public Service Finance Corporation, afterwards the Universal Finance Corporation, is that right? A I was.

Q Up to what time, Commissioner? A Up to—let me see: it was brought to my attention on December 22nd, Saturday, December 22, 1928, that a company selling stock of the Universal Finance Corporation was being criticized by the Davis Legislative Committee in Trenton, and I immediately endeavored to get in touch with the other directors of the Universal Finance Corporation, but it being a Saturday I was unable to do it, and the next day was Sunday and I was unable to do it then, and the next day being Christmas, I was unable to do it then; and the next day I called a meeting at nine o'clock the next morning, and following that meeting I resigned.

Q The matter of the dividend which was declared by the corporation June 14th—if that is the correct day—did you accede with your fellow directors relative to that dividend? A I am not so clear on that dividend, Colonel Vickers. I remember distinctly a meeting in the summer with reference to a dividend. There might have been one in June, I don't know. I didn't be-

come connected with this company until somewhere around the 1st of June or the latter part of May.

Q Whom did you know in the company at the time you became connected with it, Mr. Fitzmaurice? A I knew one man, Frank Tappan, all my life in Orange.

Q Who was Frank Tappan? A He was credit manager for Mullin's & Sons, the furniture people in Newark, and he came to see me and told me that he was connected with this company—one of the incorporators—and had given up his position with Mullin's and was devoting himself to this company, and asked me to become a director. He told me of the others identified with the thing, and I believe he left with me a prospectus of some kind which gave the names of the other directors—I knew one—one of them was Dewi T. Evans.

Q Are the others Mr. Hollenbaugh? A And the other Mr. Hollenbaugh, yes.

Q As a matter of fact, you went in as a director succeeding Mr. Tappan, is that right? A No, that is not right. Mr. Tappan was a director and Mr. Tappan continued to be a director after I got on the board for some time.

Q Who were the directors, at that time? A Tappan, Evans and Hollenbaugh.

Q Now, then, with regard to the money that the business was carried on— A I was not in any way familiar with the small loan business. I knew that such a thing was in existence under a State law, but I was not familiar in any way with the workings of it. I understood from Tappan that he had had some ten to twelve or fourteen years' experience with this as credit manager in Newark, and I understood also that Mr.

Evans, was represented to me to be an official of some sort with the Attorney General's office, in charge of securities in Newark. I inquired of Mr. Plumer if that was correct and Mr. Plumer assured me that it was and also that he knew Evans, and therefore I was also informed and shown that Conover English, of McCarter & English, had personally incorporated this company; McCarter & English were listed as general counsel for the company. Those are several things that induced me to become a director.

Q You knew that the Public Service Sales Corporation—or whatever the name of the company was at that time—was selling the stock of the Universal Finance Company, or the Public Service Finance Company, at $14 a share, is that right? A I didn't know what the price was because, as a matter of fact, one of the further representations made was that the profits of this company had been practically subscribed for. That was, you might say, the main reason why I was interested, because of the reason that I was not to be used for any window dressing. So I didn't know what the stock was being sold at before I got there.

Q Did you understand it to be the fact that the capital stock as it then existed was subscribed for? A Yes, sir.

Q As a matter of fact, you acted as attorney for this company at the time there was some difficulty with the name "Public Service Finance Company"—or "Corporation," and there was a consent decree entered in the Court of Chancery changing the name; that is right? A Just about the time I became identified with this company, which was in the latter part of May of last year, at some time or other I was informed that the Public Service Corporation had started suit and

restained the company from using the name "Public Service." I was advised that the papers had been turned over to Mr. English, as counsel for the company, and that he had advised the Public Service that they did not intend to discontinue the use of the name, and subsequently the Public Service took this injunction suit. The papers were left with McCarter & English for the purpose of protecting the company's interests. This was long prior to my getting into the company. Mr. English at that time then advised the company that inasmuch as the Public Service had started this action and that McCarter & English were so closely identified with the Public Service, that it somewhat embarrassed their office, and he preferred that somebody else handle this matter. Then I was asked my opinion on it and for the first time saw the papers. I believe I got them from McCarter & English; I know I did. I wrote to Mr. English personally, received a letter from him which is attached to an affidavit I made in the Chancery action, in which he told me that the company was perfectly justified in the position that it took and that he had handled the matter and that he could not see where the Public Service had any basis for this action. However, I took the papers home with me over the week end and I read the bill and I read the attached affidavits which disclosed that there was a good deal of confusion between these companies in telephone calls and mail and in various ways, setting forth also that the Public Service had a sort of a finance company called the Public Service Bond & Mortgage Company, and after reading it over I met the other members of this board on a Monday. The preliminary application for the preliminary injunction was returnable the next day, Tuesday, and I advised

them strongly to change the name because I was quite satisfied that the Vice-Chancellor would do so, and that met with a great deal of resistance because they stated frankly that they had paid McCarter & English a goodly sum to take care of the matter for them and that with the assurance of Mr. English, that they were perfectly justified in the use of the name, they wanted to put in a defense. Well, I told them they had my privilege to do it if they wanted to do it, but it was against my better judgment. So after mulling the thing over a bit, and after several conferences with Mr. Wright, I think his name in Wendell Wright of the Public Service, he was handling this matter. Mr. Wright suggested a half dozen names, one of which was the Universal, and that name was selected and the company decided to take it. I was accordingly instructed to consent to a decree. Mr. Wright prepared such a decree, sent it to me, I approved it and signed the consent, and it was filed in Trenton, discontinuing the action and discontinuing the use of the name by this company, and subsequently I was instructed to prepare a certificate of incorporation, of amendment, changing the name to Universal. That I did and notified the officers to come to my office to sign it. They did come but did not sign it that day, because Mr. Hollenbaugh and Mr. Evans said that they—I think it was Mr. Evans suggested it, that inasmuch as it was the policy to expand, to establish branch offices, that it would be a good time then to save future expenses and trouble and time, to while amending the certificate to change the name, to also provide for an increase in the capital stock.

Q What was done? A I advised against that, but was assured that it simply would be there in the event that it was needed in the years to come.

By the Court.

Q The certificate was amended and filed to include both the change in name and increased capital stock, is that correct? A That is correct.

By Mr. Vickers.

Q I show you what is and purports to be a certified copy of that certificate and ask whether that is the one you refer to? A Yes.

Mr. Vickers: I offer that in evidence.

Mr. Conlon: No objection.

(Received in evidence and marked Exhibit D. 19.)

Q Now, then, at the time of the meeting of June 14th and prior thereto, had you, with your fellow directors of the Universal Finance Company or the Public Service Finance Corporation any conference as to the surplus moneys in the hands of the company from the sales of stock not actually loaned out in the small loan business? A Yes, as a matter of fact this meeting that I attended, which was shortly after I became affiliated, I asked about the finances of the company, what had been done with this money subscribed for capital paid in. Is that what you refer to?

Q Yes. A I was informed that Mr. Evans had bought some securities and that the balance of the money amounting to thousands and thousands of dollars was in the bank. I told them

that that was a rather poor business policy to have that money in the bank inasmuch as it was explained to me that it would be quite some time before the money would be loaned out in the business, and I therefore suggested that the National City Company be consulted for the purpose of advising us what securities could be purchased, and as a result of that the National City Company was consulted through a Mr. Monohan that I knew there, and a list submitted to Mr. Evans, and subsequently I learned that the greater portion, practically all of the money that was then in the bank was invested in those securities. I examined the list and from my knowledge of securities through other institutions I approved of them as being extremely high class grade of securities, readily marketable and dividend bearing.

Q Let me ask for the purposes of the record who and what is the National City Company? A Well, the National City Company in my humble opinion—

The Court: Now, we will strike that out.

Mr. Vickers: The humility part of it?

The Court: That may be stricken out. As a matter of fact I suppose what you want to establish, and I see no objection to it, the National City Company is a subsidiary of the National City Bank of New York.

Mr. Vickers: That it is a recognized, and substantial institution, merely to get it on the record.

The Court: I just want Mr. Fitzmaurice to give his personal endorsement in that fashion, although I am not a witness in the case, of course.

The Witness: All right. That answer will be mine. That is what it is.

Q You knew that the firm of Haskins & Sells were the accountants employed by your corporation at that time? A Yes, sir.

Q Did you know them by reputation? A I knew them to be one of the leaders in their profession.

Q In this country and abroad? A Yes, sir. I recognized them immediately.

Q I show you Exhibit D. 18 for identification, and ask you whether you can say whether that represents a list of securities which at that time got through the National City Bank, to which you have referred in your testimony? A Does this list purport to be only the ones which were purchased with the advice of the National City or were they purchased before I became connected with them? I would have to have that answered first, because I don't recognize this.

Q I am informed, Mr. Fitzmaurice, that part of that list was purchased through the National City Company, but all of those securities were in the hands of the company as of June 30th. A I recognized some of these.

Q At the time you resigned was there anything to your knowledge so far as the conduct of this business was concerned contrary to law that induced you to resign?

Objected to; objection sustained.

Q Mr. Fitzmaurice, in the course of your testimony you referred to something which was attached to an affidavit filed by you in the cause in the Court of Chancery. As to the events that took place in the early part of your association

with this finance corporation, would reference to that affidavit assist you in refreshing your memory? A Yes, sir, it is a year ago.

Mr. Conlon: Then, your Honor, may I question the witness on this point before he is allowed to proceed?

The Court: This is a paper for the purpose of refreshing his recollection of the different events. There is no objection to cross-examination.

Cross examination by Mr. Conlon.

Q Mr. Fitzmaurice, do you quite thoroughly remember the events that happened in connection with your joining this company and what you personally did from the time you joined it until the time you resigned? A Pretty well.

Q You have a clear recollection of that now, have you? A Pretty well. There may be some things that have slipped my mind. It is a year ago.

Q When you say "slipped your mind"— A I say there may be.

Q You are not sure. Have you been asked any of those things that may have slipped your mind, or do you mean you may have forgotten something you have not yet been asked? A I have not said I have forgotten anything.

Q You remember that?

Mr. Conlon: Therefore, your Honor, I object.

The Witness: I have been able to answer everything that has been asked me.

The Court: Your objection goes to the use of the memorandum generally at this time, is that so?

Mr. Conlon: Yes. The witness has not shown any lack of knowledge yet.

The Court: What have you to say about that?

Mr. Vickers: My purpose—of course I am referring to something that is not in evidence, because I have the affidavit. I know of course that the witness does not intentionally make a statement contrary to a previous statement made under oath by him in court, and I want him to have the advantage of that so that they may correct it.

The Court: As I understand, your objection goes to the use of something for the general refreshment of his recollection. I see no reason why the witness should not have it.

I am not able to establish that because I have the witness on the one side and counsel for the defense on the other. Suppose we hear what he has to say?

By Mr. Vickers.

Q I show you the original—

Mr. Conlon: I object. I think the memorandum can be used, as far as my recollection is concerned, only when the witness is asked a question and answers that he does not remember, or that his memory may have failed, then, he may be shown the memorandum to refresh his recollection.

The Court: I think his attention should be called to the point of contrariety of the testimony and then he may use the memorandum.

Q I want to show you a previous declaration made by you.

The Court: Just answer the question.

Q The question of whether or not you attended a number of meetings of this company and attended the particular meeting that declared the various dividends while you were a director. Do you recall whether or not on that subject-matter you made an affidavit in the Chancery proceeding? A Yes, I have said that I attended these meetings.

The Court: The limit of this testimony, so far as the record is that he does not remember the meeting in June.

Q That is what I wanted to refresh his recollection on, as to that point. A I distinctly remember attending some three or four directors' meetings during my six or seven months' association with the company, but as to any particular date I couldn't give it to you.

Q Irrespective of that you did attend and isn't it a fact that you attended every meeting of the Board of Directors during the time you were connected with the company and that is part of the affidavit which you made yourself in the proceedings in the Chancery Court? A Yes, I said that.

Q Do you mean that you cannot tell whether the meeting was on the 14th day of June or some

other day when the directors' meeting was you attended? A I attended every one that I received a notice for.

Q That brings that out. Isn't it a fact that all during your connection with the company the question of establishing branch offices came up and particularly while New Brunswick was under discussion? A I remember that distinctly in December and just prior to my resigning.

Q During the time that you were connected with the company, as a matter of fact the New Brunswick office was running? A Yes, that was running in December, right after that. There were two offices to be opened at that meeting.

Q Where was the other office to be? A I think Elizabeth.

Cross examination by Mr. Conlon.

Q Have you anything whatever to do with the Financial Investment Corporation? A No, sir.

Q You own no stock in that? A No, sir.

Q Did you have anything to do with Edwards, or any of the outfit connected with the Financial Investment Corporation? A No, sir.

Q Did you have anything to do with the sale of any of the stock of the Universal Finance Corporation? A No, sir.

Q Did you sell any stock of the Universal Finance Corporation? A No, sir.

Q Were you instrumental in selling any stock of the stock of the Universal Finance Corporation, I mean by representation?

The Court: You mean by his own efforts or by his personal contact?

Mr. Conlon: Yes.

A No, sir; the stock of the Universal Finance Corporation had been subscribed, to my understanding.

Q The first issue of the stock of the Universal Finance Corporation was 25,000 shares, is that correct? A I don't remember the exact number without referring to the certificate.

Q Well, at any rate, when you joined the company, which by the way I understand from the minutes—it is my recollection and it is the fact that you were elected to the board at the time in April and the first meeting that you attended was on the 13th of June? A No, it could not have been in April, because I did not have stock issued to me until the latter part of May, and I couldn't be a director without being a stockholder.

Q If you were elected on the 10th of April it was before you accepted the office? A They may have elected me before I accepted.

Q You may have been elected, but you may not have accepted at that time? A I couldn't have been a director without being a stockholder.

Q When you joined the company the first issue of stock had been sold entirely so far as your information to you from your fellow members of the company? A So I understood. Well, just a minute, let me clarify that. There were some shares that had been subscribed for on the installment plan that had not been paid for and some of those came back and of course were being resold.

Q But, in effect— A The company had been capitalized. That is what appeared to me.

Q It was not a stock selling enterprise? A No.

Q And you used the words "window dressing" before in your testimony. What do you mean by that expression? A Every day in the week you get offers to become affiliated with companies, not to become egotistical, for the purposes of so-called dressing the window, to sell the stock to the public, and the thing that appealed to me was the general picture of such able counsel and I investigated every one of these men from the list given me and I was satisfied that they were entirely square, honorable and honest men.

Q In other words you knew, as we all do and will concede, that your name amounted to something in this community, as far as your integrity, business ability or ability as a lawyer is concerned? A I hope so.

Q You did not want at that time to allow your name to be used by a concern that was using your name primarily to encourage the sale of stock? A I would not.

Q As far as you know all this stock they were going to use in the conduct of the affairs of this company had been either sold or subscribed for at the time you joined the company? A That is correct.

Q Then, later on, when this change of name came, Mr. Hollenbaugh suggested an increase in the stock for the purposes of expanding the business? A Well, I don't know that it was particularly Mr. Hollenbaugh, Mr. Hollenbaugh and Mr. Evans came to my office on a Saturday—

Q At any rate, the reason given to you there was they wanted to open an office in New Brunswick and Elizabeth and that they could use additional stock? A I was satisfied that that was an intelligent reason.

Mr. Vickers: Additional capital, not stock.

Q When did you first find out, when did it come to your personal knowledge that after the first issue had been sold, whatever that amounted to, this company proceeded to sell through Edwards further capital stock? A Why, I was told that Mr. Edwards, who had sold the original issue and who was not identified with the Universal Finance Corporation as an officer or director, had formed a company, I never knew the name of it until it was being criticized, or its methods were.

Q When did you first know that the Universal Finance Corporation was selling more capital stock through Edwards or any other agency? A Mr. Edwards received the authority to sell from the Universal Finance Corporation, more stock. Oh, I couldn't tell you the date, unless I could refresh my recollection from the minutes, but I know that Edwards' company was authorized to sell stock. There are ramifications of it which I do not know.

Q You do not remember how much? A No.

Q You know the first contract was after the sale of the first 25,000 shares and that the second contract was for 10,000 shares? A When that question came up I was opposed to it. The minutes should show that, and the others will bear me out, because it is elementary that adding to the capital of the company and the dividend rate that the earnings of the company would be that much lessened, and I was opposed to any increase of the capital, but it was explained to me that it would be poor business to then dispose of any of the securities. I suggested that some of the securities be sold for the purpose of

establishing some of these offices and use that capital, and I was answered on that point and I was satisfied from the answers given me that the market in December, 1928, was not very desirable for the sale of securities; I knew that also of my own personal knowledge from my touch with other institutions.

Q Never mind that. A You asked me and I am trying to answer you. It was also explained to me that—

Mr. Conlon: I object to the answer as not responsive, and I ask that it be stricken out.

The Court: Read the question.

(Question read.)

The Court: I will strike the answer out.

A I do not know what the amount was.

Q With reference to this change of name of the Public Service Finance Corporation, do I understand correctly when I say that the Public Service Corporation insisted upon this change of name? A They filed an injunction suit.

Q And they insisted on entering a final decree? A I don't know whether it was a final or interlocutory—interlocutory I imagine it was.

Q Were you here the other day when that was suggested? A No.

The Court: It was a form of decree. I understood that it was admitted in the record that it was both. I suppose a reference to it will tell what it was.

Q Never mind that. At any rate the Public Service Corporation insisted upon the non-use of their name? A Oh, yes.

Q Your co-directors were prepared to oppose that in court? A Yes.

Q And it was upon your advice or insistence? A My advice.

Q That they withdrew their opposition to that and allowed the decree to go in? A That's right.

Q The three things, outside of the personnel of this organization, that induced you to become a member, the three important factors were that McCarter & English were the attorneys? A Conover English personally.

Q The fact that Haskins & Sells were the accountants? A Yes, and the fact that the capital of the company had been subscribed for.

Q And the fact that the capital stock of the company had been subscribed for? A Yes, sir.

Q Do you know of your own knowledge whether McCarter & English were consulted as to the legality or the propriety of the payment of any dividends paid out by this company? A I don't know that of my own knowledge, I was never counsel for this company.

Q Do you know of your own knowledge whether Haskins & Sells were ever consulted as to the legality or propriety in the payment of dividends? A I was so informed at directors' meetings.

Q By whom? A Mr. Evans.

Q And the other directors? A Mr. Evans was the one who acquainted me with the fact that Haskins & Sells had been retained.

Q When, I say, of your own knowledge, did you ever get that advice or information direct from Haskins & Sells or any one of their representatives? A No, not direct from them.

Q You took Evans' word for it? A Absolutely. I had no reason to do otherwise.

Q Do you remember the time when the dividends were voted to be paid as of June 30, 1928? A I have a recollection of that.

Q You do not remember the exact date? A No.

Q Was there a dividend shown to you in the financial statement from which you could analyze yourself and determine in your own mind whether or not this dividend was being properly paid? A There were figures being presented, and Evans, who was really the financial manager of this company, and at that meeting I remember the fact that Haskins & Sells were on the books and the fact that Evans, who knew of the many details of this company, and I had no occasion to decide otherwise than what he said was so. He represented at that meeting that the company was in circumstances to more than pay a dividend.

Q Well, you accepted, and I am not intimating any criticism, you accepted Evans' statement to that effect? A The same as I do in all matters of that kind.

Q You have to? A Sure, you cannot go through the books.

Q But you personally had no knowledge as to whether or not those dividends were being paid out of earnings, out of capital surplus, or out of capital? A Well, Mr. Conlon, if I had any idea that they were being paid out of capital I never would have voted for it. Out of earnings or surplus was all right, because the law permits it.

Q I am asking you whether you then had any actual knowledge outside of the information you got from any member of the concern as to where those dividends were coming from?

The Court: Contingent on what may be considered surplus.

By Mr. Conlon.

Q What I am getting at is this, Mr. Fitzmaurice: From your own personal knowledge and discarding any information that you got from your fellow members of the company, you didn't know as a matter of fact where these dividends were coming from? A No, I did not.

Q Now, you were told, however, that they were coming out of earnings? A I was told that they were earnings and surplus.

Q Earnings and surplus? A Yes.

Q Now, did you have anything to do with the preparation of the advertising literature? A No.

Q Did you have anything to do with the preparation of the radio talks? A No, sir.

Q Did you know during the period after your advent into the company and until your resignation, what the representatives of this company were saying over the radio? A I never heard a radio broadcast by this company.

Q Did you know what they were saying? A No, I did not. I never heard one and did not know otherwise.

Q Then you did not know that they were representing to the public over the radio and by their literature that the dividends of this company were upon the basis of ten per cent. per annum and were being paid out of earnings?

Objected to as containing an unwarranted assumption of fact and as contrary to the evidence.

Objection sustained.

Richard J. Fitzmaurice, cross.

Q Did you know, Mr. Fitzmaurice, that there was any representation being made to the public by these defendants in this case or any of their employees to the effect that the preferred stock of this company was paying a dividend at the rate of ten per cent. per annum out of the earnings of the company? A I knew that—

Q Will you answer that yes or no? A I can't answer that yes or no, because there are some things I knew and there are some things I did not know. For instance, I knew that Mr. Edwards was using the radio to sell stock. I never heard it broadcast.

By the Court.

Q Isn't the question whether or not you knew that Mr. Edwards had made these representations to salesmen? A Well, then, I don't know that.

By Mr. Conlon.

Q You don't know that? A No, sir.

Q You don't know that these representations were being made to the public? A No, of course not.

Q You don't know whether they were being made or not? A No, I did not. I never knew a salesman of Mr. Edwards'.

Q They were certainly not made with your sanction? A No.

Q And after your advice had been given? A You mean as to any misrepresentations made with my sanction? No, sir.

Q No, certainly not. In other words, Mr. Fitzmaurice, you knew of no such representations being made to the public? A No, sir; I did not.

Q And therefore of course they were not made with your sanction or even with your knowledge? A That is correct.

Q And that these dividends that were paid as of the 30th of June and as of the 30th of September, and the one that was voted as of the 30th of December, were you consulted by any member of the corporation and shown statements which you had an opportunity to analyze and give them the benefit of your advice whether or not those dividends were coming out of the earnings of the company? A I can't answer that no or yes. The meetings were held, Mr. Conlon, at probably five in the afternoon to suit my convenience to come from Orange from my office, and I will make this flat statement, that any dividend voted by me was relying on Mr. Evans, and I had nothing to the contrary not to do so, relying on Mr. Evans, who was naturally entirely familiar with the company and its earnings and workings, and what not, plus the fact that Haskins & Sells were on the books, and on the strength of that I would vote for the dividends, after assuring myself it was there.

Q I will possibly ask you something you answered by your answer, but nevertheless I want to get it on the record. The question is whether they, instead of explaining to you the conditions of the books, whether they ever brought the books or statements to you and put the proposition up to you and asked you for your advice? A Oh, no.

Q As to whether or not those dividends should be paid? A No. That was never done.

Q So therefore as far as your opinion went and the use of your experience in this business, these defendants did not rely on that in the pay-

ment of these dividends? A No. Maybe I relied on Mr. Evans.

Q Exactly. You relied on them but they did not rely on you, isn't that a fact? A I wasn't shown any sheet to analyze a statement or any books or any thing of the kind. I was advised that Haskins & Sells were the accountants. That was good enough for me.

Q In other words, you relied upon them? A Oh, absolutely.

Q And they did not rely upon you? A No.

Q You did not give your advice? A No.

Q You did not give them the benefit of your experience? A I wasn't asked to.

Q Because you weren't asked, is that correct? A That is correct.

Q When you found out a day or two before Christmas what was going on, you say that you immediately called a meeting on the day after Christmas at nine o'clock? A The first available time that Mr. Evans and Mr. Hollenbaugh and I— I was down there at nine o'clock and waiting for the office to open.

Q That was the first time you could get them? A That is right.

(A brief recess is taken.)

Q You there and then called a meeting of the directors? A That is right, all the directors were present.

Q You then and there offered a resolution to the effect that the further sale of the stock should be discontinued? A That's right, and I inquired as to what it was all about, the use of the name over the radio, and whatnot, and it was explained to me.

Q After it was explained to you, you offered a resolution? A I offered a resolution which was unanimously adopted.

Q At your insistence? A That's right.

Q At your insistence it was unanimously adopted? A Yes, that the further sale of stock of this company be stopped, and that resolution was adopted and carried by me to Mr. Edwards.

Q Where did you find Mr. Edwards? A On Broad street, at his office, the office of Mr. Edwards. He protested that there was nothing that he was doing to warrant this, but we had some argument about the thing and finally Mr. Edwards said, "All right," so I took the resolution, and I asked Mr. Edwards to give me a letter to Mr. Plumer to the effect that he would stop the further sale of the stock that day.

Q That letter from Mr. Edwards to Mr. Plumer was prepared by you at your insistence and over Edwards' objection? A Yes, he objected.

Re-direct examination by Mr. Vickers.

Q Mr. Edwards, by the way, his objection consisted of what? A He protested that there was absolutely nothing his organization was doing to warrant this. They had been over to Mr. Plumer's office and had given a full explanation of what he wanted to know, and then I reasoned with him that the thing to do was to stop the sale of the stock—I don't know, we were there half an hour or more, and finally I got the letter.

Q Was that a matter of policy or because you felt that there was nothing wrong? A I didn't know of anything wrong. I was satisfied of the

fact that the company was under criticism, and before I got out I wanted to do all I could to sort of straighten the situation out and I went right over to Mr. Plumer's office and told him everything I knew about these companies.

Q When you say "any criticism," you mean by the so-called Davis committee? A The first I knew about it was when a newspaper called me up and told me that the company selling the stock of this company was under criticism, that's all I knew of it then.

Q Then, you went to Mr. Plumer's office and had a talk with Mr. Plumer? A That's right.

Q And acted on Mr. Plumer's advice regarding getting out, isn't that right? A No, I told Mr. Plumer I was going to resign.

Q Did you write him a letter? A I wrote Mr. Plumer a letter, sending to him a certified copy of the resolution signed by Mr. Hollenbaugh as president, and the letter from Mr. Edwards that was sent up from my office that afternoon, and I sent it by registered mail to Mr. Plumer's office, and he received it, and in that letter I told him that I was forwarding these papers and due to the criticism of this company I was resigning.

Q Did you say anything further respecting your resignation? A I told him that I did not intend in any way to give my opinion on the situation. It was nothing I knew about other than what was in the press, but that in view of the criticism, I being in an embarrassing situation, I was getting out that day.

Q The fact is, because of your official position and your connections with financial institutions? A It was a personal embarrassment. Of course, I knew nothing about the situation and had no interest in it, and I wanted to get out of it.

Q This resolution you have referred to, "Resolved, to discontinue the sale of stock," was acted on at once, wasn't it? A That's right. I dictated it to a stenographer right there and it came right in for the meeting.

Q It was acted on at once and actually carried out? A Immediately, yes.

Q You have been asked by the Prosecutor as to whether or not after you found out what was going on, that is to say, on this day before Christmas, was there anything that you found out that was existing which in your opinion, your knowledge of the facts, constituted an unlawful act?

Mr. Conlon: I object.

The Court: Sustain the objection.

Q What had you in mind when the Prosecutor was inquiring regarding the facts about what was going on? A Only the biggest details that this newspaper was able to give me, that the selling agents of this stock were using fictitious names over the radio, and so on.

Q Dale Davis Hollenbaugh was using his regular name of Dale Davis? A I didn't know that until I asked him what was the idea and he said that that was his professional radio name. He showed me photographs he had for several years.

Q Newspaper clippings? A Yes, this morning I speak of down in Newark.

Q Are you able to remember the figures given to you by Mr. Evans from Mr. Hollenbaugh or anyone else which led you to believe that a dividend was justified?

The Court: As of what time?

Q Any of the dividend periods? A No, I wouldn't remember the figures.

Q Those figures included the surplus and net profits officially issued. Then was that a proper action by your board?

Mr. Conlon: I object.

The Court: Sustain the objection.

Mr. Vickers: Exception.

Defendants' counsel prays an exception to this ruling of the Court.

Exception allowed; let it be signed and sealed, and it is signed and sealed accordingly.

DANIEL J. BRENNAN,
Judge.

Q I call your attention to the minutes of the corporation as of September 4, 1928, for the purpose of refreshing your recollection, and I ask you whether that does refresh your recollection as to the resolution offering the 10,000 additional shares of preferred participating stock at a price of $15 a share to the public? A Yes, that is the one. I said I wanted to keep it down as low as we could.

Q That, of course, was after the capital stock had been increased on this amended certificate? A That was provided for in drawing the amendment.

Q I call your attention to the minutes of the Board of Directors of the Public Service Finance Corporation held on April 10, 1928, and I ask you whether that refreshes your recollection as to the time when you were elected?

Richard J. Fitzmaurice, re-cross.

Mr. Conlon: I object. The witness says that he was not elected at that time, he might have been elected, but he did not accept at that time.

Q (Question read.)

The Court: I will admit the question.

Mr. Conlon: Was the witness present at that meeting?

The Court: I do not see that it makes any difference.

A I cannot answer that.

Re-cross examination by Mr. Conlon.

Q You say that your resignation was based upon the statement made to you by newspapers concerning the radio talks and the use of assumed names and so on, you meant at that time you heard other things that influenced your resignation? A All I was able to learn, you see this was a Saturday afternoon and the next day was a Sunday and the next day was a Christmas, was what I got from the paper.

Q There were other reasons besides the use of assumed names? A Yes, there were other reasons in the newspaper.

Q That induced your decision? A Yes, that I wanted to get out.

JOHN G. WALLACE, sworn for the defendants.

Direct examination by Mr. Hobart.

Q Mr. Wallace, what is your occupation? A I am an investigator in the office of the Attorney-General.

Q How long have you been in that office? A Since August 1, 1928.

Q Calling your attention to Exhibit S. 10, being a letter of March 29, 1928, signed by Mr. Evans and addressed to Mr. Hollenbaugh, have you seen the carbon copy of that letter? A I believe that I have seen the carbon copy.

Q Where and when? A After the investigation by the Attorney-General's department had started and Mr. Evans had ceased coming to the office in the ordinary routine of his business, he came up to the office one day and Mr. Pollard, who was the accountant, asked me if I would—

Mr. Conlon: No, do not tell us any conversations.

By the Court.

Q Not what somebody asked you. That would be in the realm of hearsay. A I went into the office with Mr. Pollard and Mr. Evans.

By Mr. Hobart.

Q Did you then see a carbon copy of this letter, Exhibit S. 10? A Yes, at that time I did see a copy of the letter.

By the Court.

Q Did you see a carbon copy? A I saw a carbon copy, I meant.

John G. Wallace, cross.

By Mr. Hobart.

Q Who gave it to you? A The letter was given to me by Mr. Evans.

Q What did you do with it? A I gave it to Mr. Pollard.

Q Pollard was in the office with you at the time? A That is correct.

Cross examination by Mr. Conlon.

Q You say that you went into the office for the specific purpose of getting this carbon copy? A I did not go in for the specific purpose of getting this carbon copy, no.

Q Did you go in with Evans? A Yes.

Q And one of your purposes was to get this carbon copy? A I understood it to be.

Q That isn't my question. Was one of the purposes you entered the office to get this carbon copy? A To get a carbon copy.

Q Of a letter? A Of a letter.

Q That subsequently developed to be the carbon copy of this letter? A That is correct.

Q Do you know whether or not the carbon copy was in the regular files of the office? A It wasn't in the regular files in the office.

Q Where was it? A It was in a tin box.

Q It was in a tin box in Mr. Evans' desk, is that right? A Yes, sir.

Q And that tin box was locked? A I don't know.

Q And that tin box contained personal papers of Mr. Evans? Do you know that? A I don't know it. It is my understanding.

Q Is that what your understanding, from your conversation with Evans was, is that right? A No, sir.

Q Well, I am asking you? A No, sir.

John G. Wallace, re-direct.

Q The carbon wasn't in the regular files where carbon copies of correspondence are kept in that office? A No, sir.

Q It was in a tin box in the drawer of Mr. Evans' desk? A Yes.

Re-direct examination by Mr. Hobart.

Q Did you ask Mr. Evans for the letter or did he offer it to you or how did you come to get it?

Objected to.

Objection overruled.

A I asked Mr. Evans for the letter.

Q And he gave it to you? A Yes.

Q How did you know that the letter which Mr. Evans gave you was a letter which you were looking for or inquiring about? A At the time the investigation started—I refer now to the examination of the Davis Legislative Committee, I was told—

Q By whom? A Mr. Pollard.

Q All right, now, proceed.

The Court: That is not going to go.

(Counsel argue.)

The Court: Proceed.

(Question withdrawn.)

By Mr. Hobart.

Q Were you looking for a copy of any particular letter? A Yes.

Q You were. Had the letter been described to you? A No.

Q How did you know what to look for? That is what I want to find out. A I was looking for a letter which—

John G. Wallace, re-cross.

By the Court.

Q How did you know what you were looking for? That is the question. A Well, the only thing I can say is that I had been informed—

The Court: From information that he had gotten.

By Mr. Hobart.

Q From some information you had received? A Some information I had gotten.

Q Don't tell us what it was, because that is not competent. A From information I had gotten I was looking for a letter signed by Mr. Evans.

Q Addressed to whom? A I didn't know who the letter was addressed to.

Q Did you know the date that you were looking for approximately? A I didn't know the date.

Q Did you know the contents of the letter in substance? A I understood the contents of the letter were an approval by Mr. Evans of certain radio talks.

Q When Mr. Evans handed you this letter, Exhibit S. 10, you assumed that that was the letter that you were looking for? A I assumed that that was the letter I was looking for.

Q Of course you had no knowledge of the matter aside from that? A No, sir.

Re-cross examination by Mr. Conlon.

Q Evans told you that was the letter you were looking for, didn't he? A No, sir.

Q You told him what letter you were looking for, didn't you, the original of this letter had

come up, hadn't it? You knew that? The original of this letter had been produced in Trenton? A I never saw the original.

By the Court.

Q Do you know whether or not it had been produced? That is the question. A Yes, sir.

By Mr. Conlon.

Q You knew that it had been and that it was in the files in the office? A That is right.

Q You knew that before you went into the office? A That is right.

Q You asked Evans or Evans volunteered to get you the carbon copy? A Yes, sir.

By the Court.

Q Which was it? Did you ask him or did he volunteer? A He put it either way.

Q Don't put it either way. Which way was it? A I asked him.

Q You asked him? A I asked him.

By Mr. Conlon.

Q You asked him, "Where is the carbon copy of that letter in reference to these radio talks"? A I didn't ask him the direct question.

By the Court.

Q Wait a minute now. There is no occasion for any evasive response. All counsel is trying to get is what the truth in this situation is. I don't want you sparring either with Mr. Conlon or Mr. Hobart. Just tell exactly what happened. Did you ask Evans and did he produce this,

or did he come up and volunteer and say, "Here is the letter you are looking for"? A I asked Mr. Evans if there were any letters in the tin box that belonged to the State.

Q And what did he say? A He said he didn't think so, but he would look and see.

Q And then what happened? A He looked over these letters, and he showed me this one.

Q Then what did you do with the one he showed to you? A I asked if I could take the letter.

Q What did he say? A He said that he did not think it was necessary, and I said I thought it was.

Q And then what did he do? A He said, "You can have the letter." He gave it to me.

By Mr. Conlon.

Q And before you went in there Mr. Evans knew that you were looking for a carbon copy of a letter which properly belonged in the files of the office and it wasn't there? A I don't know what Mr. Evans knew.

Q Didn't you have that conversation with him? Didn't you look in the files in the office in the first place, you looked for a carbon copy of a letter? A You said before I went there.

Q Well, before or after you found the letter? A That is correct.

Q You were looking for a letter and Evans knew that you were looking for a letter that properly belonged in the official files of the company? A I presume so.

Q The letter wasn't there? A That is correct.

Q Evans knew that and produced the letter out of this tin box? A That is correct.

CHARLES E. POLLARD, sworn in behalf of the defendants.

Direct examination by Mr. Hobart.

Q Where are you employed? A With the Attorney-General.

Q In what department? A In Mr. Plumer's department, Division of Securities.

Q Showing you Exhibit S. 10, being a photostat of a letter dated March 29, 1928, referred to by the last witness, Mr. Wallace, have you seen that before or seen a carbon copy of it? A I don't know whether this is the one I saw or not.

Q Did Mr. Wallace turn over to you the latter part of December a carbon copy of a letter which had been tendered to him, Wallace, by Mr. Evans? A Yes.

Q And it was handed to Mr. Wallace in your presence, was it? A Yes.

Q What did you do with the letter after it was handed to you, or rather, the carbon copy? A I gave it to Mr. Plumer.

Cross examination by Mr. Conlon.

Q Do you know whether—do you know where the letter came from? A I do.

Q It came from the tin box in Mr. Evans' desk, didn't it? A It did.

Q The tin box was in the drawer of the desk? A It was.

Q That tin box belonged to the Mr. Evans? A It did.

Q It didn't belong to the Attorney-General in the office? It was his personal belongings? A It was.

Q In that tin box he had other personal papers? A He said he did.

Q And this carbon copy wasn't in the official files in the office? A No.

Q Do you know whether or not that box was locked or not? A It was.

Q It was locked and who had the key? A I had.

Q You had the key? A I had the key.

Q Did you ever use the key? A No, only to go through the box.

Q When? A On Mr. Plumer's instructions I was given Mr. Evans' desk and told to see if I could find any copies of letters.

Q But before that time, that was the day the letter was found or a day or two before? A A day or two before.

Q Prior to that time did you have any key to this desk? A No.

Q That was for his own personal property, that desk? A He said it was.

Re-direct examination by Mr. Hobart.

Q And did you unlock the box? A I did.

LEON STOUT, sworn in behalf of the defendants.

Direct examination by Mr. Hobart.

Q Are you employed in the office of the Clerk of Chancery of New Jersey? A Yes, sir, I am.

Q Have you at the request of the clerk in response to a subpoena, produced certain files of that company? A I did.

Q I show you the files in a case between Edward L. Katzenbach, Attorney-General of the State of New Jersey, complainant, and the Uni-

versal Finance Corporation and Financial Investment Corporation, defendants. Are the papers I show you the original papers in this action? A Yes, sir; they are.

Q Produced in response to a subpoena served upon the clerk? A Yes, sir; they are.

Q And I also show you a file in a case entitled Samuel Klein, complainant, and Universal Finance Corporation. Is that the original file from that case? A Yes, sir; it is the original file.

Q Yes.

Mr. Hobart: We offer in evidence the file in the case wherein the Attorney-General is the complainant.

Objected to.

Objection sustained.

Mr. Hobart: May I ask the grounds?

Mr. Conlon: I object as immaterial.

The Court: The Court has ruled.

Mr. Hobart: Then, does your Honor know the date of the filing of these papers?

The Court: Do you wish to argue the matter?

Mr. Hobart: I would like to, yes.

The Court: The jury may retire.

(The jury retires.)

Mr. Hobart: If your Honor please—

The Court: Is this in the nature of an information by the Attorney-General?

Mr. Hobart: It is a bill of complaint filed December 27, 1928.

The Court: What is the gravamen of the bill?

Mr. Hobart: That a prayer was made of an injunction to restrain the defendants and their officers, agents and employees, that a preliminary injunction issued on the day of the filing of the bill to restrain them from—I won't go into details—but to restrain them under the Securities Act of 1927 from making any misrepresentations and from selling any stocks, or offering for sale any stock which certain representations set forth in detail in the bill of complaint in the order to show cause; a prayer for a receiver and an injunction against the defendants.

The Court: What happened on the return day?

Mr. Hobart: On the return day the injunction was modified by permitting certain payments to be made to employees and other payments for rent and ordinary running expenses. I might say that it was returnable on January 2, 1929, and on the same day answering affidavits presented on behalf of the defendants, the originals of which are in the files, and on January 4th, two days after the return day, the order was advised by Vice-Chancellor Church, ordering that the order to show cause, referring to the order of December 27th, be discharged and the bill of complaint be dismissed. The file further shows—

The Court: You mean that there was an order of modification entered in compliance with some of the averments of the bill of complaint?

Mr. Hobart: No, the first order, which was dated the return day of the order to show cause, merely modifies the restraint to

this extent, that the defendants, pending the decision of the Court, are permitted:

(a) To pay any debt or debts for the rent of the office, hire or office expense now due and owing.

(b) To collect any moneys due or owing.

The Court: What happened to the prayer for a receiver?

Mr. Hobart: That was denied.

The Court: Was a receiver ever appointed by the Court?

Mr. Hobart: Not in that proceeding.

The Court: Not in that proceeding?

Mr. Hobart: No, sir.

Mr. Conlon: I think it would save time if we considered that both of these files are offered at the same time. There is only one offered, as far as the record shows.

The Court: There are records, one on the part of Klein, who was a stockholder of the Universal Finance Corporation, and the other the bill of the Attorney General, I think we used to call those the information.

Mr. Hobart: I do not believe they are, because this is a special proceeding under the Act of 1927, which authorizes the Attorney General to do things under the Act with regard to the sale of stock when it is made outside of the qualifications of the Act. After the hearing on January 2nd the original restraint was modified to the extent stated, and his Honor, Vice-Chancellor Church, then reserved decision, and on January 4th, two days later he discharged the order and directed that the whole complaint be dismissed. The whole thing was

thrown out. Later, there was an application made to reopen that; that was some weeks later, and on February 20th, the motion to reopen was denied, so that so far as the Attorney General goes that was over.

The Court: What will this all tend to prove?

Mr. Hobart: Two things. First that during a certain period of time the company was deprived of an opportunity to earn money, by unjust complaints or at least complaints about it unjustified. Their business was interfered with and it is a part of the history of the company's figures clear down to the 30th day of March, the date fixed in the complaint as the date when we were continuing our misrepresentations. It is also important because it says that they were deprived of paying a dividend which had been previously ordered to be paid in the meeting held the early part of December, and which was to be paid on the 2nd of January, which dividend was thereafter paid about the middle of March, according to the testimony of some witnesses.

The Court: Your offer is on the theory that this was an unfounded lawsuit on the part of the Attorney-General and a business embarrassment that meant they lost money by it. You do not contend that they did not pay dividends that were promised but that that they paid dividends out of capital instead of earnings.

Mr. Hobart: We propose to show they paid every dividend.

The Court: The State says that they did pay dividends but paid them out of the capital instead of the earnings.

Mr. Hobart: We also are offering this record in the Attorney-General's case for the purpose of showing that the very charges made in this indictment, or some of them, were made in that case. After the hearing in the Court of Chancery the Court threw out the whole charges.

The Court: You think that is res adjudicata?

Mr. Hobart: Yes.

The Court: I think not.

Mr. Hobart: This was an action against the officers of the company and its directors by the Chief Prosecutor of the Pleas in the State of New Jersey.

Mr. Vickers: Which I understand is a common law function. I would like to add at this point, if I may: How can these defendants safeguard themselves against the inference drawn by the jury from the facts in this case when it is proved that these men said they declared a dividend payable on the 2nd of January, which from the evidence in this case was not paid until March? What is our explanation?

The Court: There is no charge by the State that these men failed to pay a divident in violation of the law. The fact they may or may not have paid these dividends is not material to the issue at all that the State raises. What the State is saying is that certain dividends that you paid you

paid out of capital or capital surplus and you should have paid them out of earnings.

Mr. Vickers: That is not the only thing the State says.

The Court: No; it says a great many more things.

Mr. Vickers: It also says that we misrepresented to cheat and fraud.

The Court: Now, the judgment of the Vice-Chancellor, what he found, would not be conclusive on us.

Mr. Vickers: I am interested in the fact that the record shows that there was a bill filed by the Attorney-General involving some of the questions here involved; that the companies and their officers and agents were enjoined from proceeding with any function whatever, which order remained effective finally throughout these proceedings and then in another proceeding was again taken up almost to the period of the running of this indictment from the time the Prosecutor acted.

The Court: I can see that all of that would be perhaps an excuse for failure to pay dividends, but there is no charge of such failure and that is a criminal offense. The limit of the State's contention is to that effect, as far as this corporation paid dividends, they say, out of the capital instead of the surplus.

Mr. Vickers: We do not describe it as capital surplus, we say surplus.

The Court: They say capital and I say capital surplus and they should be paid

out of earnings, and they represented to the public that they were paid out of earnings. The State does not say that they promised to pay a dividend on the 2nd of December, when in truth and fact such was not the case, and I think this is material.

Mr. Vickers: Suppose we asked your Honor to charge at the conclusion of this case that there was no evidence justifying this jury in finding against these defendants because they did not pay their dividends as represented on the 2nd day of January, what basis would your Honor have, without this proof, for so charging?

The Court: I wouldn't so charge, because that is one of the allegations of the State that the defendants took public money generally.

Mr. Vickers: Would your Honor say that that would not affect the value of the stock where a dividend is promised payable on the 2nd day of January, and no dividend paid until the middle of March, if that is the date? Wouldn't your Honor say that it would be a fair inference of this jury, the facts appearing to the jury?

The Court: I am not at all satisfied as a matter of law that an offer of stock at $15 is a representation at any time that it is worth that amount of money.

Mr. Vickers: That is the representation. We do not know what this jury may do in the event that your Honor turns it over to them.

The Court: I think at the present I have a certain idea which I do not care to divulge and upon which my rulings will be based. I

cannot see that that is material, because there is no charge by the State that these men failed to pay a dividend which they promised to pay.

Mr. Hobart: I think we should call your Honor's attention to the other proceeding, because that to a certain extent is involved—

The Court: You mean the proceeding on the part of this man Klein, to whom they refer?

Mr. Hobart: Yes. Now, the trial in that particular case shows the bill of complaint filed on January 3, 1929, and the appointment on that date by the Court of Chancery of Mr. Merritt Lane as the custodial receiver of the Universal Finance Corporation. The bill alleges generally that the company had ceased business on account of the injunction of the Attorney-General, which your Honor will observe was in effect on that particular day and that it was unable to return to the small loan business because of the fact its license to do business had been seized by the Department of Banking & Insurance and prayed for the appointment of a custodial receiver on those grounds and that was done. Then, the file shows the operations of the receiver and his report and we finally come to an order wherein the Court directs that the business of the corporation be returned to its officers, some of the very men now before the Court on this indictment, after a most elaborate deliberation and report of the receiver, after the receiver had sent a copy of his report to all the stockholders and subscribers and the Court had directed them to ask for a vote.

The Court: There is no averment of that now in the file?

Mr. Hobart: Yes, this is one of the files identified by the Clerk.

The Court: Do you object to the offer, Mr. Conlon?

Mr. Conlon: Yes.

Mr. Hobart: Later, as soon as the receiver could get his account straightened out the receiver was formally discharged and the business of the company was returned to its officers, about the middle of March.

The Court: There was no appeal from that decision by the Vice-Chancellor?

Mr. Hobart: No. The Vice-Chancellor filed a memorandum in the file showing the reasons for the return to the officers, these very men here, of the business that was carried on.

The Court: I will hear you on that, Mr. Conlon.

Mr. Conlon: My answer to it is this: The charge as against these defendants in that respect was that in December they voted a dividend and represented that they were going to pay the dividend out of earnings when they didn't have enough earnings on hand. Colonel Vickers himself, I understand, brought out the fact that those dividends were paid on March 16th, and I objected at the time that that was immaterial to the issues in this case. Now, they want that in to infer, to justify that by showing the ramifications of a civil procedure. The intimation is going to be that the Attorney General filed a bill enjoining this company

and that bill was dismissed for lack of proof and this company was given a clear bill of health and that a stockholder filed a bill and that the bill was discharged and the company turned back to the stockholders. That, your Honor, is going to be the inference to be presented to the jury, and I think it is going to be almost impossible for me to meet that inference, and that inference is not correct. The two bills were pending together and both considered by the Vice-Chancellor at one time.

Mr. Vickers: That could not be so, the one bill was not filed until the 3rd of January.

Mr. Conlon: I say that, because if you read his opinion in the Klein case, he says, "I will advise a decree dismissing the Attorney General's bill," and I say in that respect he considered the two cases together. In the Klein case Mr. Lane was appointed a receiver, and he filed a report, of which I have a copy and of which I think a copy is in the file, and he subsequently says in that report, after giving his reasons, that in the sale of this stock the public was deceived. And he goes into details to show the misrepresentations made by these defendants in the sale of this stock.

That was a collateral matter aside from that which was before him. He was not the receiver to prosecute these defendants for the sale of stock, he was the custodial receiver to preserve the assets for the stockholders, and then he took this position, that if this company is liquidated the stockholders will lose possibly fifty per cent. of

what they have in and I think the stockholders as a matter of business should have a choice as to whether or not they should go on.

Mr. Vickers: Didn't they?

Mr. Conlon: Pardon me. Then, the fact is the stockholders did take that action and agreed to go on and in that case the merits of the bill were not adjudicated by the Court by reason of Mr. Lane's recommendation, which I think was the very best recommendation that could be made under the circumstances, but as a matter of law the issues raised in the pleadings were not passed on by the Court and these gentlemen did not get a clean bill of health, and if this file goes into the jury the jury will get that impression and it is not a fair presentation of this case to the jury and that is my objection.

I am further objecting on the ground that these files are not evidential of what they contain.

Mr. Vickers: We are not interested in the details of this. We want the facts in the record, that's all. I do not think there is any merit in the details of the bill Mr. Klein may have filed.

The Court: That would be substantially the effect on the layman as Mr. Conlon has stated?

I mean it will appear to the lay person that some other tribunal with authority has stated that this was justifiable, has stated that all these things were justifiable.

Mr. Vickers: I think this is the fair inference of the proceedings. I think it was intended to be covered by the opening of the defendants, that there has been no reason shown, either by the attorney of this State or by Mr. Klein as a stockholder or any of them after a custodial receiver was in charge, after a careful investigation that these men, these identical men in the company who are defendants here, should not be permitted to go on with this company. I think that is a very vital thing we are entitled to have.

The Court: I think that may be the Court's conclusion, but I think it is not binding on any other tribunal nor do I think it is material to this issue. If a formal offer is made of the file in the Klein case I will rule.

Mr. Vickers: It is made, your Honor.

The Court: I may consider this, then, a formal offer?

Mr. Vickers: A formal offer.

Mr. Conlon: And my objection is noted.

The Court: Objection sustained.

(Defendants' counsel prays an exception to this ruling of the Court.

Exception allowed; let it be signed and sealed, and it is signed and sealed accordingly.

DANIEL J. BRENNAN,
Judge.

New Jersey State Library

The Court: You may have an exception to the Court's refusal in both cases to permit the record in evidence. The jury may be brought in.

Exception signed and sealed accordingly.

DANIEL J. BRENNAN,
Judge.

(The jury returned to the court room.)

ALEXANDER GORDON EDWARDS, one of the defendants, sworn in his own behalf.

Direct examination by Mr. Hobart.

Q Where do you reside? A Roselle, New Jersey.

Q How long have you lived there? A About eight or nine years.

Q What is your age? A Born in '91.

Q Tell us your occupation? A I have several of them. In the real estate business; Financial Investment Corporation.

Q Any others? A No, that is all, just two of them.

Q Are you one of the incorporators of the Financial Investment Corporation? A I am.

Q When did you first become associated with the sale of stock of the Universal Finance Corporation or of the Public Service Finance Corporation, its predecessor? A In March, 1928.

Q Now, do you recall the date of the filing of the certificate of the company known as the Financial Investment Corporation? A I think that was June 8th or 9th.

Q Of 1928? A Of 1928.

Q At any rate, it was some days or weeks after you first became associated in the sale of stock of this other company? A Yes.

Q Did you sell stock of the Public Service Finance Corporation? A I did.

Q When did you begin the sale of it? A March 31st, or thereabouts.

Q 1928? A 1928.

Q Was that in accordance with the terms of the contract? A It was.

Q Between you and that company? A It was.

Mr. Hobart: I would like to ask the Prosecutor if he has the contract.

Mr. Conlon: We have one contract. I will be glad to produce it. Do you want it right now? I do not think I have that agreement.

Mr. Hobart: Well, without going into detail I will ask the witness.

Q Have you got the original contract? A No, the Prosecutor took them all.

Mr. Conlon: I will go through the papers and if it is here I will let you have it at two o'clock.

Mr. Hobart: We do not need to argue about that. I want to show generally what the terms were.

Mr. Conlon: I have no objection.

Q What was the agreement in substance? A We would have the exclusive sale on a commission basis of 25 per cent. payable out of the original funds received.

By the Court.

Q Sale of what? A The stock of the Public Service Finance Corporation, and subsequently the Universal.

By Mr. Hobart.

Q When you say "we" whom do you refer? A Financial Investment Corporation.

Q But I am referring to the time before the organization of it. A It was under a trade name known as the Public Service Sales Company, registered in the Court House in Essex County.

Q Do you recall how many shares of stock of the Universal Finance Corporation were covered by that contract? A The original contract was covered by Public Service Sales Company for 25,000 shares.

Q And the price of the stock was to be? A $14.

Mr. Conlon: Pardon me. I think I have the contract.

Q I show you what seems to be a contract between yourself and Public Service Finance Corporation, handed to me by the Prosecutor, and dated March 28, 1928, and ask if that is the contract to which you refer? A It is.

Q Do you recognize the signatures on it? A I do.

Mr. Hobart: I offer it in evidence.

(The same is received in evidence and marked Exhibit D. 20.)

Alexander Gordon Edwards, direct.

Q I observe that the contract is signed by you personally. That was prior to the organization of the corporation? A Financial Investment Corporation; that is right.

Q Did you sell the 25,000 shares called for by this contract? A We thought we did, but in the final total it was 20,000 and some odd, I think, or about 23,000, and we returned approximately $13,000 because we felt we had an oversubscription.

Q Over what period of time did you make these sales? A From March 31st to April 21st, or thereabouts.

Q Did you sell them personally? A No, sir.

Q How did you make the sales? A Through salesmen. We had an organization.

Q You referred to returning some $13,000. What was that? A We felt that we had an oversubscription on the first issue of 25,000 shares, and so we returned the money to the public.

By the Court.

Q Do you mean you returned the money to those persons who had sent you money, is that right? A Yes.

Q On the theory that there was an oversubscription? A That the issue had been oversold.

By Mr. Hobart.

Q And that sale was completed, you have stated, about the 24th of April? A That is right.

Q During that period of about three weeks will you state a little more in detail how the sales

were made? A Well, we had broadcast, of course, and we received inquiries through the mail. We forwarded literature and then had salesmen call on them and they brought in the business.

Q Where was the broadcasting at that time? A WABC, New York City, 59th street.

Q After the 21st of April, 1928, did you or your organization undertake to sell any further stock in this company? A No, we did not, not for a period of about six weeks. It took us some time to finally tabulate how much stock had been sold, so we simply made what we call courtesy announcements over the air to fulfill our contract with the station, and during that time we were negotiating with the station to put the Plaza Loan Society stock on the air.

Q Was that another company? A That is another company.

By Mr. Conlon.

Q I am sorry, but I did not get the date. A About six weeks.

Q Between what dates? A After April 21st.

By Mr. Hobart.

Q You referred to the Plaza Loan Society. So that we do not have that confused, does that have anything to do with the other company? A That we were selling stock in that at the same time as we were selling stock in this.

By the Court.

Q Mr. Hobart's inquiry is whether or not that had anything to do with this? A It is a separate company.

Alexander Gordon Edwards, direct.

By Mr. Hobart.

Q Located in Jersey City? A Jersey City.

Q Did you continue the sale of Universal Investment Corporation stock during the period or some part of the period that sales were being made in this other society in Jersey City? A Yes, we sold some.

Q Can you tell us the date when you began the second series of radio talks which related specifically to the Universal Finance Corporation? A Universal? About June 14th.

Q For how long a period of time did that continue? A About a week.

Q Did you know or were you advised of the change of the name of the Public Service Finance Corporation to the Universal Finance Corporation? A I was.

Q Do you recall when you were so advised? A It was during the campaign, and I know the Public Service Corporation agreed to let us finish before they did anything else, before the name was to be changed. I think the name was eventually changed on July 3rd.

Q When you speak of the campaign, what do you mean by that? A They had mentioned it the first three weeks we were broadcasting.

By the Court.

Q When you speak of the campaign, what do you mean by that? That is the question. A From March 31st, when we started—

Q When you speak of the campaign, what do you mean by that? A For the sale of stock.

Q You mean the campaign for the sale of stock? A The campaign for the sale of the stock.

The Court: You see, it takes us four responses to get that question answered.

By Mr. Hobart.

Q Now, have you examined the radio talks that have been offered in evidence as Exhibit S. 6, or what purport to be copies of them? A I can't recall by the exhibit numbers.

Q Well, the radio talks that were offered in evidence without regard to exhibit number. You have examined them? A Yes.

Q Can you tell with these radio talks in front of you the approximate dates when they were given, if you know the dates of your own knowledge? A I can tell by referring to the talks the approximate dates, yes.

Q Let me ask you right there, did you give some of these talks yourself? A Yes, sir.

Q Who else gave them? A Mr. Hollenbaugh, known as Dale Davis, and Mr. Evans gave one or two.

Q Now, calling your attention to the radio talks, Exhibit S. 6, I would like to have you look carefully at them. You have looked, I understand, at what purport to be copies of them. I would like to have you fix as nearly as you can the dates when those talks were given. I call your attention first to pages 1, 2 and 3 as they are indicated on that exhibit, page numbers being at the lower right-hand corner. Now, it won't be necessary, I assume, for you to read all this, because you have already read them. A Yes, but I want to connect up the—

Q Well, read them as far as is necessary. A Yes, that is what I want to do.

Q I want you to fix the dates as nearly as you can and if you can. A I think this talk was

used during the summer months of July and August.

Q And by this talk you are referring to pages 1, 2 and 3 of that exhibit? A 1, 2 and 3; that is right.

Q Now, look at the next one in order, which covers pages 4, 5 and 6. Is there anything at the end of that talk which helps you to fix the date? A Between June 14th and the 20th. I think that is the talk we put on the week we went back to clean up the issue.

Q Now, if you will refer to pages 7, 8 and 9 of the same exhibit, and tell us, if you can, the the approximate date of that talk. I particularly call your attention to a statement about in the middle of page 2 of that talk and ask if that will help you fix the time. A This talk would be—

Mr. Hobart: Is there any objection to my pointing out to the witness?

The Court: No.

Q In the middle of the page there, the reference to the branch offices. Does that help to fix the date? A That would be given in September.

Q When was the branch offices—

Mr. Conlon: I understand you made notes of those particular things?

The Witness: November 1st.

Mr. Conlon: I am perfectly willing to have Mr. Edwards use the notes. In other words, if you made note on other copies.

The Court: If you want to lead him for the purposes of identifying same, that is not objected to.

Mr. Hobart: You do not object to my leading him?

By Mr. Hobart.

Q This same part that you were referring to refers to the opening of a branch office next month? A That was opened November 1st.

Q So then this talk would be given some time during the month of October? A No, September.

Q October, if you opened in November. A "As a matter of fact it is planned to open a branch office next—" Yes, October, some time in October.

Q And that refers to pages 7, 8 and 9? A Pages 7, 8 and 9.

Q Now, calling your attention to the next talk in order, known as pages 10 and 11, can you state whether that was also given some time during the month of October? A Yes, in October.

Q Sometime in October. I call your attention to the next talk which covers pages 12 and 13, and I ask your particular attention to the statement at the end of that talk on page 13, where reference is made to the investment house of M. B. Sheppard Company at Buffalo, New York. Does that help to fix the date of that talk? A That would be about November 1st. I went to Buffalo right after election.

Q In the early part of November? A Yes.

Q Calling your attention now to the next one, pages 17, 18 and 19, they also refer to M. B. Sheppard Company, page 19? A Yes.

Q Does that help to fix the date of that talk as being in the month of November? A Yes, that would be November.

Q Now, calling your attention to pages 20, 21 and 22, will you say whether that was also during the month of November? I call your attention to the statement at the top of the second page, page 21 of the exhibit, where reference is made to a branch office in this month. A That would be in November.

Q Calling your attention now to pages 14, 15 and 16. A Pages what?

Q I guess I must have skipped one. A 23 is the next here.

Q Go back to pages 14, 15 and 16. I must have skipped that one. Look on page 14, if you will. Is there anything there which helps you to fix the date of that? A Yes. That would be in October.

Q Reference is to some article in a New York newspaper. A New York Evening Journal of October 5th.

Q Now go back to pages 23 and 24. Can you tell whether that was given during the month of November? A Yes, because it refers to Sheppard.

Q Now, calling your attention to pages 25, 26 and 27, can you state when that was given? Look on page 26. Is there anything there that enables you to fix the date? A This would be in December.

Q Of 1928? A Of 1928.

Q Calling attention to pages 28, 29 and 30. A December.

Q And then to pages 31, 32 and 33—is there anything on that first page which fixes the date of that part? A In December.

Q Does it fix the exact date, calling your attention to the reference to December 12th on page 31?

Mr. Hobart: I am pointing to the witness a reference to a date then.

Q (Continuing.) Does that fix it as December 12th? A December 12th, yes.

Q Pages 34, 35 and 36. A That would be December.

Q What is there in that talk which enables you to fix it as in December? A The increase in the dividend rates from 10 to 12 per cent. per annum effective January 1st.

Q 1929? A 1929.

Q Calling your attention to pages 37, 38 and 39, is there again a reference to January 1, 1929? A Yes. That would be in December we gave the talk.

Q Calling your attention now to pages 39, 40 and 41. A In December.

Q Then pages 42 and 43, which are the last. A That would be December.

(The Court takes a recess from one to two o'clock P. M.)

AFTER RECESS.

By Mr. Hobart.

Q Just before recess you had testified identifying the various radio talks offered in evidence and given us the dates, as far as you recall, and I now want to direct your attention to certain statements in these talks and ask you some questions about them. I call your attention to the first talk you have identified as being given some time in the summer of 1928, and I ask you to look on page 3, directing your attention to the statement, "We now offer for public subscription a

limited number of shares of 6 per cent. participating preferred stock, in one of these companies.'' Was it a fact that you were then offering a limited number of shares in one of these companies? A That's right.

Q What company did you refer to? A The Universal.

Q I call your attention to another part of this same sentence, in the statement I have just read, wherein it is said, ''Who, on July 1st, paid a dividend at the rate of 10 per cent. per annum.'' What was the source of your information? A From the Board of Directors; they had declared a dividend.

Q What Board of Directors? A Of the Universal, declared a dividend of six per cent, regular and four per cent participating, which would be two and a half per cent quarterly.

Q Let me ask you on that point. These radio talks offered in evidence, were they written out in advance of the talk on the radio? A Yes, sir.

Q Did you give some of them yourself? A Yes, sir.

Q As of those that you gave yourself did you fully recite what had been prepared or did you say something further from what had been written out in advance? A Read it verbatim, word for word.

Q I call your attention now to the second of the radio talks, pages 4, 5 and 6, and particularly at the bottom of page 5, where you referred to the Industrial Loan Corporation. Whose shares were offered? What corporation did you refer to? Bottom of page 5. A The Universal.

Q Calling your attention to the same talk on page 6 wherein you say that you were offering

for subscription a block of six per cent. participating preferred stock at $15 a share. Was that the price at which it was in fact sold? A Yes, sir.

Q Calling your attention again to the same page, where it says, "The directors have authorized an issue to participate in an extra dividend of four per cent. as of July 1st, which places the offering on a ten per cent. dividend basis." What was the source of your information from that statement? A From the directors of the Universal.

Q Did you, in good faith, believe that to be true?

Mr. Conlon: I object.

The Court: Sustain the objection.

Q Calling your attention to the next series, indicating pages 7, 8 and 9, where reference is made to an institution which is now on a ten per cent. dividend basis; may I remind you before you answer the question that that was one of the talks which you said was given in the month of October. What was the source of your information that it was on a ten per cent. dividend basis? A From the Board of Directors of the Universal Finance Corporation.

Q The same talk, same page, reference is made to a branch office? A Yes, I know; they opened November 1st in New Brunswick.

Q Calling your attention to the next talk, pages 10 and 11 where again the statement is made, "On a ten per cent dividend basis," that was from the same source of information, from the directors? A Yes, sir.

Q Without referring to the talks in between, you have read these carefully? A Yes.

Q You have read these talks offered in evidence carefully? A Yes, sir.

Q Wherever the statement is made that the stock is on a ten per cent dividend basis, was that the same source of information, from the Board of Directors of the Universal Finance Corporation? A Yes, sir.

Q Calling your attention to certain statements on pages 17, 18 and 19, particularly on the top of page 18, where it was stated, "This function is conducted under permit granted by the Department of Banking and Insurance of the State of New Jersey." What was your source of information regarding that point? A I knew that to be true because I had sold the Plaza Loan Company, and I knew in this case what I was selling, offering the public.

Q Was the Plaza Loan Company a small loan company? A The same identical business.

Q In the same case, page 18, you refer that, "This we expect to see increased soon," referring to the dividend. What was the source of that information? A Where is that?

Q Middle of page 18. A From the progress the company had made, the directors had told me they expected to increase the dividend rate.

Q Calling your attention to page 20, at the the bottom of the page, where it is said, "I bring you an opportunity to purchase stock in an established industrial loan institution that is licensed, bonded and its business supervised by the Department of Banking & Insurance of the State of New Jersey." What was the source of that information? A I knew that from several sources, both from the Universal and the Plaza. It was a fact and true.

Q That it was licensed? A That it was licensed, bonded, and the business supervised. I saw a financial statement of the Plaza Loan which was certified to by the Banking Department with comments made.

Q Was that before this talk was given? A Yes, sir.

Q Now again, without repeating on each occasion where reference is made to the Department of Banking & Insurance, was that the same source of information as all of the statements relating to the license and the bond and the supervision? A Yes, sir. I have seen the license.

Q Have you ever seen the license of the Universal? A Yes, sir. It has to be displayed where it can be seen by everybody. That is one of the rulings.

Q Now, referring to page 29, where it is stated, "The stock is now on a ten per cent basis. This is to be increased January 1, 1929, to 12 per cent.,"—what was the source of that information? A The directors informed me that it would be increased to 12 per cent, per annum January 1st.

Q Now, following along page 31, I call your attention to a statement that the price was to be increased to $16 per share. What is the fact about that? A That is true, and it was a contract drawn between the Universal and the Financial Investment to that effect.

Q Were in fact some shares sold at that rate? A Yes.

Q Calling your attention to page 37, which you have already identified as being delivered some time in the month of December, you state there "Price of shares is $16." Was that the

price at the time the talk was given? A That was the price at the time the talk was given, and the stock was sold at that price.

Q Calling your attention to page 39, is there anything in that which enables you to fix the date as to when the increased price went into effect? A December 12, 1928.

Q Calling your attention to page 42 where it is said that a large percentage of subscribers to the last offering had already been holders of shares of the previous offering. Was that the fact? A Yes.

Q Now, on page 43—I might also say on various other talks I will ask one question as to all of them—when you refer to the participation feature, was that the fact in regard to the stock of this corporation? A Yes.

Q Referring to the various questions which I have just asked you with regard to certain statements in the radio talks, at the time those statements were made, did you believe them to be true? A Absolutely. They were true.

Mr. Conlon: I have no objection.

Q I now want to direct your attention to some other exhibits. I call your attention to Exhibit S. 2, purporting to be a pamphlet or circular, and ask you if you recognize that? A I do.

Q Can you tell from the face of that document whether or not that was issued from the office of the Financial Investment Corporation? A We prepared this but on it it says, "Advanced proof."

Q You are not clear in your recollection whether that was issued or not? A I don't know whether they ever used it or not.

Q What was the source of the statement that appears in this circular, Exhibit S. 2, with regard to the business and organization of the Industrial Finance Corporation as set forth in that circular? A Well, when I offered the stock for public sale I was more or less familiar with it because I had sold the Plaza loan, and I knew the business was conducted under the Egan Act of 1914, and it was licensed and bonded and the business supervised by the Banking Department, and that they were limited to a small loan business up to $300. I knew that to be true.

Q Not only believed it, but knew it? A Yes, I knew it.

Q Then referring again to this same exhibit where the names of the officers appear, of the Universal Finance Corporation, did you know whether they were in fact the officers at that time, or did you know it before the circular was prepared? A Yes, sir.

Q And that was Mr. Hollenbaugh as the president; Mr. Fitzmaurice as the vice-president; Mr. Tappan as the secretary and Mr. Evans as the treasurer? A Yes.

Q It so states on the circular. Referring to another exhibit, S. 1, some reference has been made to the picture on the front of this circular purporting to show Broad and Market streets. Was that circular prepared or issued by you under your direction? A It was, with one alteration.

Q What was the alteration? A At the time this was prepared the Financial Investment sent it out, and we didn't want the public to be deceived, and there used to be a sign, some bank in Newark had a big sign up there, that we were afraid they might figure that the Universal was a bank. So we had that blocked out.

Q Was that sign you refer to a large electric sign that you see ordinarily above the roof of that building where the office of the Universal Finance Corporation was located? A Yes, it was that roof.

Q Was it a sign of a bank then known as the Guardian Trust Company? A Yes, it was the Guardian Trust.

Q Except for the blocking out of that sign, is this picture taken from a photograph? A Yes, photograph of the building.

Q Have you any way of determining the date approximately when this circular S. 1 was issued? There does not seem to be any date on there. That is the reason I ask that. A I could not without records.

Q I call your attention to the list of the officers of the Universal Finance Corporation that appear on S. 1. Does that help you to fix the approximate date? A It would help some.

Q I call your attention to the fact that Mr. Tappan's name does not appear on that. A I don't remember—

Q Can you say whether it was some time after he resigned? A Oh, it was after he had resigned, yes.

Q I call your attention to the statements on this Exhibit S. 1, or some of them, where it was said, "Offering an unsold balance of so many thousand par value $10 a share." Was that the par value? A That was the par value, yes.

Q Directly under that appears, "Six per cent. participating preferred stock." Was that the kind you offered? A Yes, sir.

Q "Paying ten per cent. annual dividends." Was that the fact? A Yes, sir.

Q The price is given as $15 a share. Was that the price? A Yes, sir.

Q I call your attention to Exhibit S. 3, and I call your attention to the fact that on that exhibit the price is stated as $16 a share. Does that help you fix the date? A Yes. It must have been December 12th. That is the time the shares were advanced to $16.

Q On that dividend statement, "Par value $15 a share." That was the same stock, and the statement appears, "This to be increased to 12 per cent. January, 1929"? A Yes, sir.

Q That was the same source of information as on the radio talks? A Yes, sir.

Q Calling your attention to a photostatic copy of what purports to be the certificate of stock of the Universal Finance Corporation. Do you recognize it? A I do.

Q This happens to be one issued to Mr. Thomas I. Berry. Is that the form of stock certificate that was used by you in making these sales and the form used by the Finance Corporation? A Yes, sir.

Mr. Hobart: I ask to have this photostatic copy marked for identification.

(Same is marked D. 21 for identification.)

Mr. Hobart: Is there any objection to its being a photostatic copy?

Mr. Conlon: No.

Mr. Hobart: Then I offer it in evidence.

(D. 21 for identification is marked Exhibit D. 21.)

Q I call your attention to Exhibit S. 5, which has been identified as "Treasure Chest of Modern

Finance. December, 1928." Have you ever seen that before? A I have.

Q Reference is made in some parts of this to the stock and the dividends of the Universal Finance Corporation. Have you read this over? A I have. I read it over before it was ever mailed out.

Q Without taking it up in detail, it is quite lengthy, did you read it over sufficiently and recently to determine whether or not the statements, according to your knowledge, were true at the time they were made? A Yes, sir.

Q Were they true? A Yes, nothing ever went out except the truth.

Q This other exhibit seems to be the same one (indicating). You haven't another one of these, have you, Mr. Prosecutor?

Mr. Conlon: There are only two.

Q Calling your attention to what purports to be the November issue of "Treasure Chest," marked S. 16, without taking the time to read it all, was that prepared with your knowledge? A Yes, sir.

Q Did you carefully consider the assertions that were there made? A I did.

Q To the best of your knowledge were they true at the time they were made? A Yes, sir.

Q I call your attention to, I think it is S. 4. At any rate it is a form letter purporting to be signed by Mr. Cawthorne, treasurer, and on the letterhead of the Financial Investment Corporation. Can you tell us whether or not that was sent out by the Financial Investment Corporation? A I cannot swear to that. I really do not know whether that letter was mailed out or not.

Often times we prepared letters and would find a mistake and would destroy them, would not mail them out.

Q Have you had an opportunity to read this particular form letter since it was offered? A No.

Q I want to direct your attention to one other statement. In some of the radio talks, perhaps in the circular, but at any rate some reference was made to industrial banking. Tell us what the source of your information was for that statement, or the use of those words? A Yes, from the Trust Company of New Jersey and the Broad and Market—

Mr. Conlon: I object. I do not think that is based on any information, the source of his information and the use of the words.

Mr. Hobart: I want to show the adventure of this man and his co-conspirators. It is a common term.

The Court: I will let it stand.

Overrule the objection.

Q I call your attention to a letter of November 26, 1926, from the New Jersey National Bank & Trust Company. Did you ever see that before? A Yes, sir.

Q Do you know where that came from? A Yes, it came from a bank.

Q Do you know where it came from today? A No.

Q Except until when I handed it to you, just now? A No.

Q Did you have that letter before you at the time you used the expression?

Mr. Conlon: That is objected to as immaterial.

The Court: Show it to the Prosecutor. No one knows what is in it. Maybe he will admit it.

Mr. Hobart: It is his letter.

The Court: Show it to him again.

Mr. Conlon: I object to the letter.

The Court: May I see it? I cannot pass on it without seeing it.

Sustain the objection.

(Letter is marked D. 22 for identification.)

Mr. Hobart: You do not object, Mr. Prosecutor, do you, because I have not proved the signature?

Mr. Conlon: No. If the ground of the objection is stated and argued the contents of the letter will be revealed. This witness is testifying for himself.

Mr. Hobart: He is testifying for all the defendants. Without further objection consider what Colonel Vickers has said as what I say.

Mr. Conlon: I object to it as being immaterial and incompetent to prove or giving the basis of the reason the witness gives.

The Court: Objection sustained.

Mr. Hobart: Exception.

Defendants' counsel prays an exception to this ruling of the Court.

Exception allowed; let it be signed and sealed, and it is signed and sealed accordingly.

DANIEL J. BRENNAN,
Judge.

Mr. Hobart: I believe it is understood on behalf of all the defendants.

The Court: The understanding is that an exception taken by either of counsel for the defendants will be considered for the benefit of all defendants and the exceptions when taken are so intended whenever either counsel take them.

Mr. Conlon: May we also stipulate that these defendants, or such of them who testify, and testifying on behalf of all the defendants?

Mr. Hobart: That is my understanding.

Mr. Vickers: I do not think that any situation made by counsel or the Prosecutor will alter the situation, because that is a rule of law. The defendants testify for themselves and by their co-defendants according to law and no further.

The Court: They do peculiarly in a case of this character.

Mr. Vickers: Yes, that is the point.

Cross examination by Mr. Conlon.

Q Mr. Edwards, the Financial Investment Company was owned by you, wasn't it? A Three of us, three stockholders.

Q Did anybody else put in money, any money into it, beside you? A No.

Q And you took eight shares and had two other shares issued to Cawthorne and Perry, is that right? A That is right.

Q One share to each of them? A Something like that.

Q And you controlled the company? A Yes.

Q And it was your company? A Yes.

Q They did what you told them? A Not always, no.

Q You could make them do what you told them? A I could do that.

Q If the occasion ever arose? A If it was necessary.

Q How much did you invest in the Universal Finance Corporation in the beginning of the business? A Nothing.

Q How much did you invest in the Universal Finance Corporation during the first month of its existence? A Nothing.

Q Who paid the $250 cash that was paid under the company? A Mr. Hollenbaugh.

Q And that was paid in under your name? A No, put in in his name.

Q In his own name? A I told you once before that I put it in, but I was confused as to the Financial Investment, and it was Mr. Hollenbaugh that did it.

Q He paid in $250 and he gave a note for $1,000, is that correct? A That is correct, I think.

Q How much money did you take out of the Universal Finance Corporation or the Financial Investment Company between the organization of those companies and the 31st of December, 1928?

Mr. Vickers: That is objected to on the ground it contains an unwarranted assumption of fact that he took any money.

The Court: Lay a foundation for it.

Q Did you take any money out of either of these two companies during the period that I have stated? A Under the contract I was paid my commission.

Q How much money were you paid? A 25 per cent. commissions.

Q In dollars and cents? A I don't know.

Q You don't know? A No.

Q Have you any idea? A I read in the receiver's report it was around $170,000, but I don't know.

Q You have no idea? A No.

Q Do you keep any books? A The Prosecutor has them.

Q You had the use of the Financial Corporation books? A I did not go over the Universal Finance books.

Q Do you keep any personal books? A No.

Q So from your personal books you have no idea how much money was taken out of this corporation, have you? A I couldn't tell you.

Q Would you say that the receiver's report of $178,000 was incorrect? A I didn't say it was incorrect.

Q Well, is it about right? A I read it. I don't know. I didn't check up the figures.

Q I didn't ask you that. I asked you if it was about right so far as you remember. A Approximately I would say.

Q How many shares of stock were issued to you by the Universal Finance Corporation? A None.

Q How many shares were issued to your mother? A I think 1,334.

Q How many to your wife? A None.

Q How many to your brother? A I think 800.

Q Who is Belle Edwards? A My mother.

Q Who is A. G.? A That is me.

Q You had no stock? A No.

Q Who is T. P. Edwards? A My brother.

Alexander Gordon Edwards, cross.

Q You say your wife had no stock? A No.

By Mr. Vickers.

Q You mean yes, don't you? A I mean no.

Q You mean she did not have any? A Yes, I mean she did not have any stock.

The Court: His answer is yes, his wife had no stock.

By Mr. Conlon.

Q Perhaps you will save time if I ask you this, Mr. Edwards. What shares of stock did the members of your family own? A My sister-in-law had about 1,300, my mother about 1,300, and my brother eight.

Q Hundred? A Approximate figures, yes.

Q And those three amounts total more than fifty per cent of the total issue of common stock of the Universal Finance Corporation? A That is right.

Q Were they the actual owners of that stock? A Yes.

Q Just a minute. Or were they acting for you? A No, they weren't acting for me.

Q Did they pay any money for their stock? A No.

Q As a matter of fact, you had this stock issued in their names, did you not? A I did.

Q And there was money paid to those stockholders, was there not? A No.

Q By the Financial Investment Corporation? A Oh, by the Financial Investment Corporation?

Q Yes. A Yes, I gave my mother some money, my sister-in-law, my brother.

Q Do you remember how much cash you personally took out of the Financial Investment Corporation? A No.

Q Was it in the neighborhood of $19,000, $20,000? A Around that figure, I should say. That is a guess.

Q That is, net? A Net to me. I get around eighteen or nineteen thousand.

Q What is the Florida Home Realty Company? A It is a real estate concern that I am interested in in Roselle; they have some apartments.

Q Was there something in the neighborhood of fourteen or fifteen thousand dollars paid out to them?

Mr. Vickers: How are other corporations concerned with this when there is no allegation any place on the part of the State contradicting the proven contract in this case that either this witness or the company that he represented under contract got 25 per cent. of the money. Now, what he did with it does not seem to me to concern anybody.

Objection overruled.

Defendants' counsel prays an exception to this ruling of the Court.

Exception allowed; let it be signed and sealed and it is signed and sealed accordingly.

DANIEL J. BRENNAN,
Judge.

Q That is a company controlled by you, isn't that a fact? A No.

Q You are interested in it? A Yes.

Q Did they get payments from the Financial Investment Corporation of between fourteen and fifteen thousand dollars? A Whatever it says there I guess is about right.

Q And Mrs. A. G. upwards of $1,550, is that about right? A If it says so.

Q And Mrs. T. P. Edwards $2,300? A The same.

Q And Belle Edwards $25, is that right? A I guess so.

Q Those amounts are, or approximately those amounts were taken out by those individuals and that company from the period of April 1, 1928, to the close of the company at the end of the year? A Not from the Universal I would not say, no.

Q Well, Financial Investment Company? A Yes, but all that money didn't come from the Universal that Financial Investment received.

Q During that period, then, there was paid to those sources, yourself, Florida Realty Company, in which you were interested, T. P. Edwards, Mrs. A. G. Edwards, Mrs. T. P. Edwards and Belle Edwards a total of those amounts, which is about $38,000, is that correct?

Mr. Vickers: I object to that on the ground it is incompetent and irrelevant in this case, because there is no allegation at any point in the State's indictment or in any particular or by the direct examination that any part of this conspiracy was an improper distribution of the moneys which were earned by way of commissions, either by this defendant or by the company that he organized.

The Court: What have you to say about that?

Mr. Conlon: This goes much further than that. This is a conspiracy to defraud for the benefit of the defendants, and I am trying to show what benefit the defendant got out of this conspiracy.

The Court: Is it not relevant from the standpoint generally of showing motive?

Mr. Vickers: In the face of a contract that the 25 per cent. was coming to him for this sale, and it being admitted by him and by everybody else, proved with the contract here, how can the question as to the expenditure of the proceeds be relevant or material?

Objection overruled.

Defendants' counsel prays an exception to this ruling the Court.

Exception allowed; let it be signed and sealed and it is signed and sealed accordingly.

DANIEL J. BRENNAN,
Judge.

Q It is a fact, isn't it, Mr. Edwards, that there was paid from those sources of the Financial Investment Corporation something in the neighborhood of $38,000? A The Financial Investment Company received money other than from the Universal.

Mr. Vickers: I would like to include that in the ground of the objection, that it is shown in this case by the proof that at the same period of time when this stock of the

Universal Finance Corporation was being sold there was a sale of stock of the Plaza which we must assume furnished sources of revenue and the distribution of those sources of revenue are neither relevant nor material to this issue.

The Court: All that upon the income from the Plaza Loan is entirely in the field of assumption so far, there being no evidence other than the statement on the part of this witness that a stock sale was in progress coincident with part of this sales campaign. The original ruling will stand.

Defendants' counsel prays an exception to this ruling of the Court.

Exception allowed; let it be signed and sealed, and it is signed and sealed accordingly.

DANIEL J. BRENNAN,
Judge.

Q Will you answer the question? A Yes.

Q That is a fact? A They received approximately that much money from the Financial Investment Company.

Q And it is a fact that Dale Hollenbaugh received in the neighborhood of $10,000 from the Financial Investment Company over that, is it not? A If that is the figure given there.

Q Is that about correct? A I don't know.

Q You mean to say you have no idea? A I don't remember. I didn't run the books. I didn't issue the checks.

Q Have you any idea whether Hollenbaugh got more than $5,000 out of it? A I guess he did.

Q Did he get more than six? A Whatever is said in there is the approximate figure.

By the Court.

Q Wait a minute, now. What office did you have in the Financial Investment Corporation? A President.

The Court: Proceed.

By Mr. Conlon.

Q I don't want the figures that I have. I want to know what you know about this, Mr. Edwards, and I want to know whether it is true that Hollenbaugh got in the neighborhood of $9,700 from the Financial Investment Corporation during the time of his connection with it? A The only figures I can be governed by are those. I did not keep the books myself. I never looked at them.

By the Court.

Q Do you mean to say you are not able to tell us even approximately what a man took out of the corporation that you were president of even approximately? A Approximately the figures quoted there.

Q How much? A Mr. Conlon said $10,000.

Q I am asking you. I am not asking you what Mr. Conlon said. I am asking you what you say you know of your own knowledge as the president and the principal stockholder of this corporation, how much money this man took out of it. A Of my own knowledge I couldn't answer it.

Q Do I understand that you couldn't answer how much of it this man took out? A Of my own knowledge, no.

The Court: Proceed.

By Mr. Conlon.

Q And you could not answer, I suppose, how much Mrs. Hollenbaugh took out or received? A No, sir, I could not.

Q What about Evans? A I could not.

Q How much did you subscribe to the preferred stock of the Universal Finance Corporation during the course of its existence? A I didn't subscribe to any personally.

Q You didn't subscribe to any personally? A No.

Q So it is a fact that you put nothing into the treasury of the Universal Finance Corporation? A That is right.

Q And from that treasury drew the payment of commissions to the Financial Investment Company, there was paid in commissions to your company $178,000 within a period of eight months, is that correct?

Objected to on the ground it contains an unwarranted assumption of fact that anything was paid to this witness out of the treasury of the Universal Finance Corporation.

(Counsel argue.)

The Court: I think that is technically correct. I will sustain the objection.

Q Well, it is a fact that you put nothing, invested nothing in the Universal Finance Corporation, either in the common or preferred stock? A That is right.

Q And did you own or control—not own, but control more than fifty per cent. of the common

stock of the Universal Finance Corporation, is that correct? A My family do.

Q You do? A My family do.

Q Then your statement to us now is that you don't control that stock? A I couldn't force them to do it.

Q Where is the stock? A The Prosecutor has it, I think.

Q Do you know what name it stands in? A Belle M. Edwards, I think, T. P. and his wife.

Q Do you know whether it is endorsed in blank? A I do not.

Q Would you know if I showed it to you? A If you showed it to me I would know.

Q You have no recollection on that? A I have not.

Q You say these questions, and I want to understand just what you want us to, but that stock is not in your control, is that correct? A I would say that legally it is not.

Q I am not talking of legally, I asked you whether or not it is in your control. A That is a pretty hard question to answer.

Q Would you say it was not? A Legally it is not.

Q Well, actually is it? A If they would do as I requested—

By the Court.

Q Where were these books of account, these stock certificate books when they were seized by the State? In whose custody were they at the time of their seizure by the State? A You are asking me, your Honor?

Q Yes. A The officers of the Universal Finance Corporation and the Financial Investment Company, both.

Q Where were those (indicating)? A Those particular books, I don't know.

Q The stock certificate books were with the officers of the Universal Finance Corporation and the Financial Investment Company both, is that correct? A I really don't know. I know this, that the name had been changed and they had gotten together to cancel all stock certificates at the Public Service to have them endorsed and returned.

By the Court.

Q This inquiry is directed to the certificates of the Universal Finance Corporation, Mr. Conlon?

Mr. Conlon: Yes.

Mr. Vickers: The Financial Investment Corporation.

Mr. Conlon: No, the Universal Finance Corporation.

A I don't remember whether they ever delivered the certificates to the Universal.

Q (By Mr. Conlon.) Where were the stock certificates? A At the time of the raid, you mean?

Q Yes. A I presume in their respective offices; I am not sure.

Q Did the members of your family have the certificates issued to them? A I don't think they ever received the Universal. I think the Prosecutor has them.

By the Court.

Q There were no Financial Investment Corporation stocks issued to them?

Mr. Conlon: They were issued, but not torn out of the book.

The Court: Of the Financial Investment Corporation as well?

Mr. Conlon: No.

The Court: That was simply the selling organization.

Mr. Conlon: I thought you were speaking of the Public Service?

The Court: No, I meant the Universal Corporation.

By Mr. Conlon.

Q Were those shares represented to be in the names of members of your family ever in their physical possession? A Yes, sir.

Q They were? A Yes, sir.

Q When? A Do you want me to explain how I think it is?

Q If you know. A The Public Service Finance Corporation issued the certificates. Then, the name was subsequently changed to the Universal Finance Corporation and they were all asked, the stockholders, to send the certificates in, and have the Universal Finance Corporation issue them and to the best of my knowledge I believe they were issued, but I don't believe they were mailed out, I think that they were taken in the raid. That is my candid opinion. I do not think that they were endorsed in blank.

Q You do not admit, as I understand it, that although those certificates were in the names of members of your family, that you were actually in fact the equitable owner of them? A I think they did—

Alexander Gordon Edwards, cross.

Q Will you answer my question? A I cannot answer it yes or no.

Q (Question read.) A No.

By the Court.

Q Who paid for the original shares of common stock originally? A Mr. Hollenbaugh.

By Mr. Conlon.

Q Mr. Hollenbaugh did not pay for those shares? A Yes, all of them.

By the Court.

Q The testimony is that there was a payment of 25 cents a share.

Mr. Conlon: Yes.

Q At whose instance were they made out to members of your family? A My instance.

The Court: Proceed.

By Mr. Conlon.

Q Did your family, any part except yourself, ever interest himself or herself in the corporation as far as the corporate affairs of the Universal Finance Corporation? A Ever?

Q Yes. A Yes, my brother is now vice-president.

Q Did he up to the 31st of December, 1928? A He used to visit the office occasionally.

Q Did he ever attend a meeting? A That I don't know.

Q Who else subscribed to any preferred stock in the Universal Finance Corporation? Hollen-

baugh, Cawthorne, Perry and Evans? Any of them? A The Universal Finance Corporation?

Q Yes. A I think Hollenbaugh did, but I don't think Perry or Cawthorne did.

Q You do not know those things? A I think Hollenbaugh did. I don't think that Perry or Cawthorne did.

Q Don't you know as a matter of fact that they did subscribe to the stock and pay in $350 apiece? A No.

Q And only withdrew it on December 19, 1928? A No.

Q You don't know that? A No.

Q You never heard that before? A No.

Q You stated before—

Mr. Vickers: Unless the Prosecutor gives us the assurance that he proposes to follow that up I think that we are entitled to interpose an objection even as late as this.

Mr. Conlon: I will give that assurance.

Mr. Vickers: Very well.

Q The representations made in this literature that was shown you and which is now in evidence, do you take your share of the responsibility in the dissemination of the matter contained in that literature? A All of it.

Q I did not ask you to take all of the responsibility, I asked you to take your share? A I will take all, gladly.

The Court: He apparently includes all of these parts.

Q As I understand it, you said that information came from the directors of the Universal Finance Corporation? A Part of it.

Mr. Vickers: What information?

Mr. Conlon: Withdraw the question.

The Court: This witness says that he takes the responsibility for the dissemination of the literature disseminated by the selling agent, the Financial Investment Corporation, and he has been directly examined in substantial part by Mr. Hobart, and he says he takes or assumes all of the responsibility for that literature.

Mr. Vickers: There is no objection to that. My only objection was to the fact that all of this information was received from the Board of Directors.

Mr. Conlon: Withdraw the question.

Q You testified that some of the information you obtained from the Board of Directors of the Universal? A Yes, part of it.

Q Were you at any time in a position where you could not verify anything you were told by any of the directors of the Universal Finance Corporation? A No.

Q You could have verified anything they told you? A Yes, sir.

Q You helped prepare your radio address? A Yes.

Q You helped prepare your literature? A Yes.

Q And you helped to instruct salesmen? A No.

Q You instructed the instructor of salesmen? A Yes.

Q That was who? A Mr. Perry.

Q You instructed Mr. Perry as to how he should instruct the salesmen? A Yes, sir.

Q Were you thoroughly familiar with the representation being made about this stock? Were you? A Yes, sir.

Q Did you know that they were representing and it was being represented on your behalf that the stock of this corporation was six per cent. participating preferred stock, which means that six per cent. is set aside with a dividend of one-half of the net remaining profits is distributed to the holders of this stock? A That is what it is.

Q Did you know that they were representing the price in their broadcasting the securities offerings over the radio, but only if they varied any increase? A That is right.

Q You knew that was being represented? A Yes, sir.

Q Did you know this was being represented the enterprise is under the supervision of the Department of Banking & Insurance of the State of New Jersey? A Absolutely; that is true.

Q I did not ask you if that was true. I asked you if you knew that it was being so represented. Did you know this was being represented, "It is now paying dividends of ten per cent. per annum, and this is to be increased to 12 per cent. on January 1, 1929, all out of the earnings and still adding to surplus account"? Did you represent that to the public? A I do not remember that particular phase, but I remember that it was paying ten per cent., to be increased to 12 per cent.

Q Would you say that that particular phase was not discussed among your prospects? A It was paying ten per cent. and to be increased to twelve per cent.

Q Will you please answer the question? I say, would you say that that particular phase was not disseminated among your prospects? A You mean told that it was paying ten per cent.?

Q I will read it to you again, "Now paying dividends of ten per cent. per annum which is to be increased to twelve per cent. on January 1, 1929, all out of the earnings and still adding to the surplus account." Did you know that that was being disseminated among your prospects? A Out of earnings a surplus and we were adding surplus?

Q Do you understand my question? A I don't quite understand your question, whether we represented it to the public?

Q As follows. A That we were paying ten per cent.

Q I will read it to you again. A Increased to twelve per cent. and adding to surplus.

Q Were you disseminating this representation to the public in connection with this stock, "Now paying dividends of ten per cent. per annum, this to be increased to twelve per cent. on January 1, 1929, all out of the earnings and still adding to surplus account"? Will you answer that yes or no? A Yes, that's right.

Q You were disseminating that representation? A Yes, it states so there.

Q Also this: "The treasurer of the corporation, Mr. Dewi T. Evans, is State Examiner in the Division of Securities of the Attorney General's Office of the State of New Jersey"? A Yes, sir.

Q You represented that? A We did not broadcast it. It may have been incorporated in a particular letter, but not broadcast.

Q In some of the literature? A No, there were about two hundred copies that went out, but we were instructed to take it off, and we did.

Q You were instructed to do that in May? A Yes, sir.

Q And that is what was gotten out towards the end of the year? A. In the latter, it might have been quoted, but not in any radio talks, only in prospectus.

Q It was stated to the public on occasions? A On some occasions.

Q Mr. Edwards, when you made or had made by your men the representations to the public that broadcasting securities offerings over the radio are permitted only after a thorough investigation, did you have any knowledge of the letter of Dewi Evans written to Hollanbaugh on the stationery of the Attorney General of the State of New Jersey? A I did not.

Q You knew nothing about that? A No, I did not.

Q Didn't Hollanbaugh speak to you about it? A No.

Q Didn't Evans speak to you about it? A No.

Q Didn't you speak to Mr. Clark about it? A No.

Q Are you sure of that? A Positive.

Q When you represented to the public that the business was under bond of the State of New Jersey, you knew that that bond was in the amount of $5,000, didn't you? A I did.

Q Did you know what the condition of the bond was? A More or less familiar with it.

Q You were? A Yes. I knew to this extent—

Q Never mind the extent. Did you ever in the course of your talks to prospects personally,

or did you ever instruct your men to tell your prospects that when they stated that the business was bonded in the State of New Jersey, that it was in fact bonded in the amount of $5,000? Will you answer that yes or no, please?
A Will you repeat that, please?

(The last question was read by the stenographer).

A I can't answer it yes or no. Some of them may have been.

Mr. Conlon: Your Honor, I submit that that question can be answered yes or no.

The Court: I think it can.

By the Court.

Q The question, Mr. Edwards, is whether or not you personally informed any prospect to whom you made a representation, or whether you instructed any representative to inform any person that the bond to the State of New Jersey was in the sum of $5,000. A I personally, yes.

By Mr. Conlon.

Q You personally? A To Mr. Perry, yes.

Q Did you instruct Mr. Perry to so instruct the salesmen? A I don't think so.

Q Have you any personal knowledge of any instance in which a prospect was told that the amount of that bond was $5,000? A No.

Q Did you ever tell a prospect or instruct your salesmen to tell other prospects that that bond was given to the State of New Jersey conditioned for the conduct of the small loan business in accordance with the Act? A Yes.

Q And that it was a protection to the borrowers on this note? A Yes, sir.

Q And that it was not a protection to the stockholders?

Objected to as containing an unwarranted assumption of fact and law.

Objection sustained.

Q Did you ever consult with McCarter & English, with Richard J. Fitzmaurice, or with any member of the firm of Haskins & Sells, your accountants, or any one of your employes, as to the contents of your literature and your radio broadcasting? A Did you say Richard Fitzmaurice, did you mention his name?

Q Yes, I mentioned his name. A My recollection is that one day Mr. Fitzmaurice came to the office and we were discussing radio and he asked to see some talks. He had nothing to do with preparing them, but he wanted to see them and read them over, and I guess we commented. I don't remember. But he had nothing to do with it as far as preparing it.

Q Is that the only consultation you had with either McCarter & English, Fitzmaurice or Haskins & Sells? A We did not take up the talks with McCarter & English.

Q I am not talking about the talks. I am talking about literature and radio talks. Did you consult McCarter & English about the contents of that stuff? A No.

Q Did you consult with Haskins & Sells or their representatives about any of it? A Yes.

Q Who? A Took it up with Mr. Johns.

Q When? A I don't remember the dates.

Q Do you remember about when? A I know we had to get permission to use their name and it was taken up with Mr. Johns.

Q You mean the using of their name was taken up with Mr. Johns? A Yes, but they passed on the literature, I mean, made certain recommendations.

Q Who passed on that literature? A That I couldn't tell. We took it up with Mr. Johns.

Q You took it up with Mr. Johns, and what was your conversation with Mr. Johns? A He took it up with the others.

Q How do you know? A He said so.

Q What did he say? A That he had taken it up with the office.

Q That he had taken it up with his office? A Yes, sir.

Q When was that? A I don't remember.

Q As nearly as you can say? A Whenever we had the prospectus printed.

Q You mean each time you had a prospectus printed? A Yes.

Q Whenever you had a prospectus printed? A Yes.

Q You mean that was submitted to Haskins & Sells' office? A Yes.

Q And that they approved it? A We took it up about their name and what Mr. Johns told the office I don't know, but it was mentioned.

Q Mr. Edwards, it is kind of hot and we are all tired. If you try to answer the questions I think we will save a lot of time.

Mr. Vickers. I think the witness has fairly answered the question.

Q I am not asking you about the use of Haskins & Sells' name. A Well, they would not permit it without seeing a copy.

Mr. Vickers. That is exactly what he said. This witness says that they took it up with them because they had to get their permission to use their name.

The Court. The limit of his testimony so far has been that Haskins & Sells consented to the use of their name after he spoke to Mr. Johns or somebody. There is no testimony on his part in the record up to the present time that he took up with Haskins & Sells the subject-matter generally on the literature submitted.

By Mr. Conlon.

Q Did you at any time take up with Haskins & Sells or any of its representatives the subject-matter generally of your literature and ask them if they complied with the facts? A No.

Q You did not? A No. They scrutinized it, however.

Q Now, you have answered the question. So when you represented to the public that all of the detailed work is in the hands of Haskins & Sells, who bear wonderful reputations as accountants, you did not mean for the public to understand that they approved what you were saying to them, did you?

Objected to on the ground it contains an unwarranted assumption of fact.

Objection sustained.

Q When you made a representation that all detail work is in the hands of Haskins & Sells, one of the leading firms of certified public accountants of the United States, you did not mean to have the public believe by the words "All de-

tail work is in the hands of Haskins & Sells," that Haskins & Sells were approving the method of your financing, and the representations that were made to the public, did you? A No. I meant that they took care of the Universal matters.

Q You mean that they were your bookkeepers? A No, Universal.

Q Universal bookkeepers? A Yes.

Q And that is all you meant? A Took care of their audits, every detail of their work.

Q The dividends that were paid as of June 30th was voted on at a meeting on June 14th, is that correct? A Yes.

Q At that time had you received a statement, a profit and loss statement from Haskins & Sells, on June 14th? A No.

Q You knew about the passing of that dividend, didn't you? A I did.

Q You were consulted about it? A I was.

Q You were in constant touch with them? A Yes, I was.

Q And you say that at that time you had no statements of Haskins & Sells? A No.

Q And that the other directors had no statements of Haskins & Sells? A No.

Q Do you know at that time whether there was a statement of profit and loss of the business prepared at that time? A I know that Mr. Evans had prepared figures and I further know that it was our understanding that the Sales Company in allowing the commission was to pay every expense until June 30th, the Universal had no expenses, and that the earnings were sufficient to more than pay the dividends.

Q. Did you know as a matter of fact, Mr. Edwards, whether or not the dividends that were

paid as of June 30th by the Universal Finance Corporation were paid out of earnings? A Yes.

Q You knew that as a fact? A Yes.

Q Is your recollection on that any clearer now than it was on December 27th last? A Yes.

Q It is clearer now? A Yes.

Q Your recollection now is clearer of what you knew last June than it was then? A Yes.

Q December 27, 1928, did you in answer to a question propounded to you by me in the Prosecutor's Office give this following answer:

"Q Do you know as a matter of fact whether or not the dividends were paid out of the earnings? A No; I would not swear on it, no." Did you answer that way then? A I did, and I correct it now.

Q Wait a minute. Did you answer as follows: "Q Do you know how much money they have made? A No, not to the penny. I know they had a very good business in securities.

"Q You did not know at the time whether or not they even made enough to pay dividends? A No." Did you answer that way? A I did.

Q And you say that now you remember that on the 14th of June you knew they had enough earnings to pay dividends? A I do, yes.

Q How do you account for the fact that you now remember that you knew that on June 14th and on December 27th you could not remember? A I will tell you why, Mr. Conlon. Figures are as foreign to me as airships. I have always sold my whole life. At that time if you would ask me a month from now what I said today about figures, I would not recollect, but since that time Mr. Evans—there was a paper prepared of figures that he had which I did not remember when you talked to me. Further than that I

know that the Sales Company was to bear every expense.

Q You knew that then, didn't you? A Sure, I knew it then.

Q You knew that on December 27th? A Yes. May not have remembered it, because it is out of my line entirely.

Q Any other reason? A No, that is the only reason. I am not familiar with figures.

Q Where is the paper you speak about? A I dare say Mr. Evans has it.

Q What do you mean, you dare say Mr. Evans has it? You know if it is here in court, don't you? A No, I am not positive of it, no.

Q When did you see it last? A He prepared figures—

Q Pardon me. When did you see it last? A Oh, it was after Christmas, after he had talked to me.

Q When did you see it last? A Two or three months ago.

Q Have you asked Mr. Evans for it? A No, we have talked it, discussed it.

Q Have you asked Mr. Evans for it? A No, I have not.

Q You did not anticipate being asked that by me when you took the stand? A Yes, the same as I did the first question about paying.

Q You knew that I was going to ask you that question? A Certainly I did.

Q In spite of the fact you knew that you didn't ask Mr. Evans for the paper? A Yes, I did talk about it to him about a couple of months ago.

Q He did not give it to you? A No, he did not give me the paper, no.

Q Do you know whether he has it now or not? A No, I don't.

Q Do you think if you asked him he might have it? A You can ask him.

Mr. Conlon: May I ask the witness to be excused until I find out whether he has the paper?

Mr. Vickers: That is a new method of procedure, to withdraw this witness. This witness has not been examined on any paper. I want to say to the Prosecutor that when Mr. Evans takes the stand he will produce the paper. There won't be any doubt about it either.

The Court: On that representation I think you may proceed, Mr. Conlon.

Q Did you at any time explain to any one of your prospects or instruct any of your salesmen to explain to your prospects that when they said that this was ten per cent. stock, that that meant legally that it was to be ten per cent. on par and not on the investment? A Absolutely. Mr. Perry understands that thoroughly. I did not come in contact with the men. Mr. Perry knows. He has been in the business for twenty years. He knows what it is.

Q I of course take it for granted you know what it is too. A Surely.

Q That is not the question. I am asking you whether you personally ever explained to a prospect or whether you ever instructed any salesman to explain to any prospect that when you said that this was a ten per cent. stock, that legally meant that it paid ten per cent. on par, which was about six and two-thirds per cent. on the subscription price? A I explained that to Mr. Perry. I did not instruct salesmen or prospects.

Q You talked to prospects? A No, only over the radio.

Q Didn't you sell any stock? A Sold one person.

Q Now the dividend that was paid as of September 30th, did you at the time know of your own knowledge whether or not that dividend was paid out of earnings? A I knew from Mr. Evans that it was.

Q You knew from Mr. Evans? A Yes, and Mr. Hollenbaugh.

Q Now, will you answer the question? Did you of your own knowledge know whether or not that dividend was paid out of earnings? A Yes. They told me so.

By the Court.

Q Now, Mr. Edwards, that is not an answer to the question at all and the question is perfectly plain, did you know of your own knowledge? A I did not make an audit.

Mr. Vickers: I desire to interpose an objection on the ground that a person's knowledge is gained from what he hears.

The Court: That may be one of the ways in which some of it is gained.

Mr. Vickers: That is the only reason for my objection.

The Court: When you know something of your own personal knowledge you know it from something more than what somebody else tells you.

Mr. Vickers: That would depend on what the knowledge was.

The Court: The question here is capable of an explicit answer. It has not been explicitly answered yet.

A I didn't make an audit, but know from personal observation of the books.

Q Answer the question.

The Court: I think it has been answered sufficiently now. He said he didn't know of his own observation or any examination he made of the books.

Q I take it from that that your answer is no?

A I didn't make an audit, no.

Q I would like that question answered specifically. I didn't ask about the audit.

The Court: This quality of evasiveness has run through all the testimony of this witness. This witness is intelligent and capable of explicit and definite answers and the State is insisting that they be answered definitely and explicitly.

Mr. Vickers: Your Honor has stated that the witness has answered the question sufficiently, but the State insists on having a yes or no answer.

The Court: We will have the last question read.

The stenographer informs me that the stenographer who just left the room took that question.

Mr. Conlon: I will withdraw the question and propound a new one.

Q As to the dividend paid as of September 30th, did you have any knowledge as to whether

or not that dividend was paid out of earnings of the Universal Finance Corporation? A I saw figures. I didn't make an audit of the books. I could not, I am not capable, but I did see figures that Mr. Evans had that it was paid out of earnings.

Q You saw those figures? A Figures they had prepared.

Q What figures were they? A Income and expense.

Q You can read a financial statement, can't you? A Yes.

Q And you understand a financial statement? A I wouldn't say to that.

Q Do you mean to say you cannot understand a profit and loss statement and comparative balance sheets? A Yes, I know the general figures, but I cannot make an audit. I cannot do that. That is altogether out of my line. I don't know a thing about it. I have sold all my life, that's all; that's all.

Q Do you mean to say that you don't know how to analyze a financial statement? A I know when they write it down, I know what they mean.

Q True, you were the man who was the head of the company that started the radio talks in this way on occasions, "The Financial Investment Corporation of 605 Broad street, Newark, New Jersey, are specialists—" A That is right.

Q "In an industrial loan company issue"? A Yes, sir.

Q "And we are taking this opportunity to explain to you the different features in connection with the investment"? A That's right.

Q Still that is the limit of your knowledge of analyzing a financial statement? A I say I cannot prepare them.

Q Do you know how much money the company had out on loans on June 30, 1928? A I do not.

Q Did you then know? A Undoubtedly I did.

Q Do you know now? A No.

Q Would it refresh your recollection if I showed you that it was something in the neighborhood of $10,000? A I think that is right.

Q Do you know how much money was invested in stocks at that time? A I believe $170,000 or $190,000, I have forgotten.

Q Do you know that the income of a business from the small loan business was in the neighborhood of $41,000? A No, we didn't have Haskin & Sells' statement at that time. We didn't get that until almost the 1st of October.

Q You didn't get that until almost the first of October, the statement of June 30th? A No.

Q Were you responsible for this statement made over the radio, "Heretofore every allotment or issue that the Financial Company has offered through the medium of the radio has been fully subscribed."

Mr. Vickers: Will you refer to the exhibit number you are questioning about, Mr. Conlon?

Mr. Conlon: I cannot. I do not know at present.

Q Were you responsible for that statement? A Responsible for all those statements, yes, in the radio talks.

Q By the way, you talked over the radio, didn't you? A Yes, sir.

Q You were not a radio performer, were you? A No, sir.

Q You did not have a radio name? A No, sir, but I used one.

Q You used the name of Gordon, didn't you? A That's right.

Q In other words, you would be introduced by the radio announcer as Mr. Gordon? A Yes, sir.

Q Then, Mr. Gordon of a finance company would address the radio audience? A Yes, sir.

Q You would then state in effect that your company was a specialist in the industrial loan issue, is that right? A Yes, sir.

Q What other issue besides the Universal Finance Corporation did you ever promote? A The Plaza Loan Company.

Q Did the Financial Investment Company have anything to do with that? A They dealt in some of the stocks, bought some.

Q When was the Financial Investment Company organized? A June 8th.

Q When was the sale of the Plaza Loan Company completed? A The stock selling campaign was about June 12th, but we dealt in it after that.

Q The campaign lasted until June 12th and this company was formed on June 8th? A Yes, but—

Q So, the Financial Investment Company had to do with the issue of that stock for that period of four days and then the promotion by the Universal Finance Corporation, is that right? A Yes, but we dealt in the Plaza Loan Company after that, also small loans.

Q Did you promote the sale of any other stock? A No.

Q Were you, as a matter of fact, a specialist in the promotion of industrial loan issues? A

Yes, that's all we sold, didn't handle anything else.

Q You did not handle anything else but the Universal Finance Corporation? A And the Plaza Loan Company.

Q After the Plaza Loan Company was over? A That's all.

Q You did not tell the radio audience that you were confining your efforts to the Universal Finance Corporation, did you? A Did we tell what? Will you repeat that please?

By the Court.

Q Did you tell the radio audience that you were confining your efforts to the Universal Finance Corporation? A I don't think so.

By Mr. Conlon.

Q You know so? A I do not think it is in the talks, no. I do not think we did tell them.

Q You know it is not in the talks, don't you?

Mr. Vickers: The name of the Financial Investment Company or the Plaza Loan Company was not mentioned in the talks.

Q You did not mention the Universal Finance Company by name, did you? A No.

Q You told the radio audience, "We are specialists in industrial loans, or industrial banking and investments," whichever words you used, "and we have to offer to our patrons and prospects a stock of a company that has unusually fine prospects." That is right, isn't it? A Yes.

Q You did not tell them that was the only thing you had to offer? A We had the Plaza

Loan Company to offer. We still had the Plaza Loan.

Q After you were finished with the Plaza Loan Company did you tell them that was the only thing you had to offer them? A No.

Q Were you responsible for this statement of a talk that was made shortly prior to January 1st in which you said, among other things, "As announced on Wednesday evening, the price of shares offered at $15 has now been advanced to $16 a share and on January 1, 1929, the dividends will be increased from 10 to 12 per cent." Were you responsible for that statement? A Yes, sir.

Q It was made some time in December? A Yes, December 12th.

Q Under the terms of your agreement the price of the stock could not be increased without your consent, could it? A Yes, sure.

Q What? A It was under contract I had to sell it, as per contract.

Q Under your agreement, isn't it a fact that the price could not be increased from $15 to $16 a share without your consent? A By mutual consent.

Q You did consent to that? A Yes, sir.

Q Before you raised the price of the stock from $15 to $16 a share did you submit, before you gave your consent to it, did you submit to Haskins & Sells the question and ask their opinion on it? A No.

Q Or to Mr. Fitzmaurice? A No.

Q Or to McCarter & English? A No.

Q On that same evening were you responsible for this statement, "What is more, it points to its earning record with confidence and pride, confidence that it will continue to pay dividends." A Yes, sir.

Q That was in December? A Yes, sir.

Q Did you then, of your own knowledge, know whether at any time the company had earned enough to pay dividends? A Getting back to my own idea, I didn't make an audit.

(Argument.)

Mr. Conlon: I didn't ask you that.

Q (Question read.) A Yes, I was informed so.

Mr. Conlon: I ask the Court to instruct the witness to answer the question yes or no.

The Court: The Court has indicated before that that is not an answer, as far as this witness is concerned.

Mr. Vickers: In this kind of an action where the defendant is charged with wilful misrepresentation the witness is entitled to disclose any knowledge or source of information he has.

A I knew it from figures I had seen of Mr. Evans and Mr. Hollenbaugh.

Q Are these the same figures that you are talking about, the same statement that you spoke of before? A The June statement and the statement figures I saw, yes.

Q They disclosed to you what? A A profit.

Q Of earnings? A Yes.

Q When was this radio talk delivered by you, which says in the last paragraph, "The directors have authorized a six per cent. participating dividend as of July 1st"?

The Court: I do not think the stenographer got that on the record the way you said that, Mr. Conlon. It was quite under your breath.

Mr. Vickers: That is objected to. I think the original should be produced here.

(Argument.)

The Court: Counsel for the defense has the privilege to insist on the original.

A In that last paragraph I think we used that from June 14th to the 20th.

Q That was some time before the 1st of July, wasn't it? A Yes, very late, the whole thing I can tell you I think we used that from June 14th to the 20th.

By the Court.

Q That is from the 14th of June to the 20th of July?

By Mr. Conlon.

Q During that time how much money did you have invested in stocks, approximately? A You mean the Universal Finance Corporation?

Q Yes.

Mr. Vickers: This witness hasn't any money invested in the stocks.

Mr. Conlon: I said the Universal Finance Corporation.

A While the talk was put on?

Q No, from the 14th of June to the 20th of July.

Mr. Conlon: I will withdraw that question.

Q At that time how much had the Universal Finance Corporation had invested in stocks? A I saw the figures as of June 30th.

Q What did they amount to? A It seems to me either $170,000 or $190,000.

Q Those stocks had been acquired from time to time for the then preceding two months? A I don't know when they were bought.

Q You knew that they were bought in the course of two months? A Yes.

Q Now, referring to page 3, were you responsible for this statement made over the radio, "The assets of the corporation consisted at all times of cash, liquid accounts receivable and notes"? A That is right.

Q The entire funds of the corporation were placed either in the corporation depositaries or in several liquidating loans that were assured of safety and adequate security? A Yes.

Q Was that statement then true? A Yes, sir.

Q At that time you had money invested in stocks? A Sure, they are liquid.

Q You considered them in the class of liquid accounts receivable? A Surely.

Q That was your definition? A Yes, sir.

Q Did you over the radio or in your literature at any time represent to the public that the greater portion of the cash assets of the Universal Finance Corporation was invested in stocks and not in small loans? A No, not in any radio talks.

Q Or in any other way? A I think that Mr. Perry knew it, yes, and the salesmen knew it.

Q Mr. Perry was not one of the public. I am asking you as far as you know whether they told the public? A No.

Q Was any information given to the public at any time by the sales force as to the amount of money the Universal Finance Corporation had invested in stocks?

Mr. Vickers: I object to this line of questioning. These defendants are not indicted charged with conspiracy to cheat the public, they are indicted for cheating certain persons and persons unknown.

The Court: Why isn't it sufficient to include the general public, and isn't that the way it usually is charged, in just that language?

Mr. Vickers: No, I could have asked for a bill of particulars and confine the State to that issue.

The Court: And the State might well have answered as to the particular persons and the public generally.

Mr. Vickers: It could not. You cannot cheat the public generally.

The Court: As a matter of law?

Mr. Vickers: Yes, that is what this indictment is, a matter of law.

The Court: You say that you cannot be accused of making a fraudulent statement to the public generally?

Mr. Vickers: Yes, your Honor.

The Court: That is your understanding of it. I will overrule the objection.

Defendants' counsel prays an exception to this ruling of the Court.

Exception allowed; let it be sealed; and it is signed and sealed accordingly.

DANIEL J. BRENNAN,
Judge.

Q (Question read.) A No.

Q Do you remember the Christmas issue of the "Treasure Chest of Modern Finance"? A I do.

Q Were you responsible for this statement in the article under "Latest News," just as going to the press, "With this issue of your Treasure Chest comes the welcome news of increased dividends"? Were you responsible for that? A I O. K.'d it.

Q Were you responsible for this, "The ardent support given this business by the buying public has enabled the directors of the Universal Finance Corporation to declare an increase of dividends." Were you responsible for that? A Yes, sir.

Q At that time how much money was invested by the Universal Finance Corporation in stocks? A I don't remember the stocks, I know that in small loans they had about $400,000.

Q No, there was more than that invested in stocks. A Oh, yes, more than one hundred, but how much more I do not know.

Q As to the Plaza Loan Company, you just had to do with the sale of that stock, isn't that true? A Well, yes, I had the contract.

Q You weren't connected with the Plaza Loan Company? A No.

Q The other members of your firm were Cawthorne and Perry? A That's right.

Q What had Mr. Cawthorne's business been? A He was with me over on the Plaza Loan Company.

Q What had he done before that? A He had been with the Union County Trust Company for years.

Q As paying teller? A Yes, and cashier of another bank in Brooklyn.

Q Was that before or after he was in Elizabeth? A After.

Q What about Mr. Perry? A Mr. Perry has been in the security business twenty years or more.

(Adjourned to 11 o'clock A. M. Monday, June 3, 1929.)

ESSEX COUNTY COURT OF QUARTER SESSIONS.

Monday, June 3, 1929.

FIFTH DAY.

Continued pursuant to adjournment.

Present, counsel as before stated.

ALEXANDER G. EDWARDS, recalled in his own behalf.

Re-direct examination by Mr. Hobart.

Q Down to the 30th of June, 1928, who paid the expenses of the Universal Finance Corporation, I mean by that the overhead? A The Financial Investment Corporation paid all of the expenses.

Q Where were the offices of the two companies at that time? A National State Bank Building.

Q Were they in the same office? A Same office.

Q Is it a fact that there was an adjustment made between the two companies with regard to the overhead for expenses for that date? A The Financial Investent Company was to pay all and then after that date assumed by the Universal Finance Corporation.

Q Now, reference was made on your cross examination to a figure of $178,000, speaking in round numbers. Do you know what that was for? A That was the gross amount received under the contract the Financial Investment Corporation had with the Universal Finance Company. Expenses had to be paid out of that.

Q Who paid those expenses? A Financial Investment Corporation.

Q Without your going into detail of all the expenses, state generally what the expenses were. A Sometimes commissions were paid at ten per cent., for a while $1.50 a share, later reduced to $1.25. Radio expense varied from $250 to $2,000 a week; literature, 'phone, all expenses had to be deducted out of the $178,000.

Q After all of the expenses were paid what was the net to the Financial Investment Company, approximately? A Approximately $58,000, which I had to divide three ways.

Q It had to be divided? A Yes, sir.

Q Was that a corporation too? A Yes, sir.

Q A substantial part of the $58,000 went to you personally as owner of the Financial Investment Corporation? A Approximately $20,000 was my compensation.

Q Why did you have to divide it three ways? A Because I am interested in the real estate business in Roselle Park, and I didn't put any time in on the real estate business.

Mr. Conlon: That is objected to.

The Court: That is immaterial. Objection sustained.

Q Did you have partners in your enterprise? A Yes, sir.

Q How many partners did you have who were entitled to share in any profits you may have had?

Mr. Conlon: Objected to.

The Court: Sustain the objection.

Mr. Hobart: The inference is that this man received a very large sum of money and I want to show what was done with it.

The Court: Even if he did, what of it?

Mr. Hobart: The inference is that he put it all in his pocket.

The Court: He had that election. What he did with it is immaterial to this issue.

Mr. Hobart: But it did not belong to him and I want to show what disposition he made of it.

The Court: He had other persons in the Financial Investment Company who were partners?

Mr. Hobart: Yes, and in other enterprises.

The Court: If you want to show that the payments were made to others, it is all right, or other officers of the Financial Investment Company as their proportionate share, but what he did with this money had nothing to do with this case.

Mr. Hobart: May I call your Honor's attention to the fact that the testimony shows that the Florida Home Realty Company received a certain amount.

The Court: That is proper for explanation, and if there is an explanation of it, he may explain what he did with it, but what he did with this money he received for his own, we are not concerned with.

I will sustain the objection, Mr. Conlon, for the record.

Q About the Florida Home Realty Company, you were asked about that by Mr. Conlon. What company was that? A A company I have two other partners in. The real estate business in Roselle Park.

Alexander Gordon Edwards, re-direct.

Q Was there a Carter Investment Company? A No, I don't know of that.

Q Was there any other company besides the Florida Realty Company? A No.

Q In the Florida Real Estate Company, you had two other partners in that? A Yes, sir.

By Mr. Hobart.

Q You were asked also on cross examination whether your recollection of the facts at this time was clearer than when you were under examination by the Prosecutor in the latter part of September. Will you state why your recollection is clearer now than it was then?

Objected to as already answered.

Objection overruled.

A Because I have refreshed my memory by referring to figures and various data.

Q You were also asked about the picture on one of these circulars. Have you since checked up with the photographers to see if you could find one of the original pictures? A I have.

Q Did you between adjournment of court and this morning obtain from the photographer one of the pictures of which that picture on the circular forms a part? A I did.

Q Is this it? A It is.

Mr. Hobart: I offer it in evidence.

Mr. Conlon: I object, your Honor. This is a picture that was not disseminated. This defendant is not charged with not doing something. He is charged with doing something.

Mr. Hobart: But it is in corroboration of the witness' testimony as to what was done with the picture that is put on the circular. That is the only point.

The Court: There is no denial of that. I mean, there is no representation here that he did not do it. His testimony was that the office literature that was disseminated was the same as the representation here except that this sign was blocked out so as not to give the public the impression that this was the Guardian Trust Company. I do not think that is material. I sustain the objection.

Defendants' counsel prays an exception to this ruling of the Court.

Exception allowed; let it be sealed and it is signed and sealed accordingly.

DANIEL J. BRENNAN,
Judge.

Mr. Hobart: May I mark it for identification?

(The same is marked Exhibit D.25 for identification.)

Q Have you checked up as to the time when this picture was taken? A I did.

Q Can you state approximately when the picture was taken? What I want to do is to fix as nearly as possible the time when the circular went out. A About the middle of September the picture was taken.

Q And the circular which has been offered in evidence by the State was sent out when, according to your best recollection? A In October.

Alexander Gordon Edwards, re-cross.

Re-cross examination by Mr. Conlon.

Q This Florida Home Realty Company which got part of the commissions, was not a stockholder in the Financial Investment Company, was it? A No.

Q And whatever payments were made to that company were made at your direction? A No, it was the understanding before I undertook the sale of stock.

Q It was made at your direction to the Financial Investment Company? A Yes.

Q You instructed the Financial Investment how to make the payments? A Yes.

Q And they made them in accordance with your instructions? A Yes.

By the Court.

Q And they were charged against your commissions? A Yes.

Q Those payments were charged against your commissions? A Yes.

Q Exactly as if you had got them? A Yes, and I remitted it to the Florida Home.

By Mr. Conlon.

Q Now, you say that on December 27th, last, you then could not remember whether such dividends as were paid had been paid out of earnings or surplus. You remember making that statement? A Yes.

Q And you say that now your recollection is different? A Yes.

Q You say that you referred to figures and data? A Yes.

Q What figures and data do you mean? A Figures that Mr. Evans had prepared that he had kept and I went over it with him.

Q When did you go over those figures? A Oh, a couple of months ago.

Q When did you go over them the first time with him? A The first time was last June, around June.

Q When? A On the June dividend, and September, in September, and the December was about the first part of December.

Q As to the June dividend, when did you go over the figures? A I don't remember the day, but the middle part of June.

Q The middle of June? A Yes.

Q Was it before or after the 14th of June? A I couldn't recollect, Mr. Conlon.

Q You started to broadcast when? A In April.

Q Was the trend of your broadcasting any different before the 30th of June than it was after the 30th of June? A Oh, yes.

Q It was. A Yes.

Q What other data did you look at that refreshed your recollection? A As to the dividends?

Q Yes. A The various sheets that Mr. Evans had.

Q Then, by figures and data you mean the same thing, you mean the statements? A Yes.

Q The statement of Mr. Evans that you have? A Yes.

Q How many statements were there? A Three.

Q Did they have any dates? A That I don't remember.

Q Where are they now? A Mr. Evans has them.

Q Do you know that he has them? A I am not positive. I have seen them.

Q You have not asked him since Friday whether or not he has them? A I did not. I did not see Mr. Evans until this morning.

Mr. Conlon: Now, if your Honor please, this witness has testified to the contents of statements that are apparently in court. Unless they are produced now, I will be put in the position where I will have to call this witness later on, and I now demand that those statements be produced if they are in court.

Mr. Vickers: Mr. Conlon brought it out. We did not bring it out. I said before when Mr. Evans takes the stand these statements that I presume the witness refers to will be produced.

The Court: Have they been subpoenaed, or has notice been given to produce them?

Q Have you refreshed your recollection since you were on the stand on Friday from these figures? A No.

Q Have you seen the statements? A Positively not.

Q Have you talked with Evans about it? A I have not.

Q You haven't asked him if he has them in his possession? A I did not.

The Court: Mr. Conlon, could not they have notice to produce them here, or could not they have been subpoenaed?

Mr. Conlon: No, I don't know what the records are. They are apparently personal records of Evans.

The Court: Well, wait and see. If it be necessary to recall this witness, that can be done.

Q You say that the Financial Investment paid all of the expenses of the Universal up to the 30th of June? A Up to the 30th of June. That was the understanding they should pay them all.

Q I didn't ask you about the understanding. Please answer the question and let us save time. Do you say that the Financial Investment paid all of the expenses of the Universal up to the 30th of June? A They were to be paid by the Financial Investment.

Mr. Conlon: If your Honor please, I think the witness should answer the question.

The Court: Why characterize the witness' testimony. I did so before and I do not want to do it again to his detriment or injury.

Witness: But, your Honor—

The Court: Now, wait a minute. I am not at all satisfied with the character of responses similar to that he has given. I have indicated that before in the course of the trial.

Mr. Vickers: If it please the Court, the Financial Investment is a corporation. Now, I think that is fair to this witness. How can he say whether they did or not? It seems to me he is entitled to that leeway. Here is a corporation whose duty it is, under the evidence—

The Court: There is almost no question that he is asked that he does not take some

leeway. He can answer it yes or no, or he can answer it yes so far as he knows. He can say yes except certain checks, if that is not the fact, and he qualifies his answer except these certain checks which were signed by somebody else.

Mr. Vickers: I think your Honor does not get me. He may know that they should have done it, but he is asked here to swear that they did do it.

The Court: Then, so far as he put it.

Mr. Vickers: Answer yes or no.

The Court: As I say, I am not so much interested in that as I am with the frankness with which he makes his responses.

Mr. Conlon: He is in a better position to answer the question now after Colonel Vickers' remarks than he was before.

By Mr. Conlon.

Q Did I understand you correctly that on your direct examination you said that the Financial Investment Corporation had paid all the bills of the Universal Finance Corporation up to the 30th of June, 1928. Did you say that? A Yes, sir.

Q Do you know that to be a fact? A I don't know it to be a fact.

Re-direct examination by Mr. Hobart.

Q You were asked by Mr. Conlon about the trend of your broadcasting before the 30th of June. Was there anything to the best of your knowledge and recollection in the broadcasting prior to the 14th of June, which is the date that certain dividends were declared, was there any-

thing in your broadcasting, to the best of your knowledge, which prior to that time represented that the stock of the Universal Finance Corporation was on a ten per cent dividend basis at that time? A No, sir.

Re-cross examination by Mr. Conlon.

Q Have you any copies of your broadcasting before the 14th of June? A No.

Q What did you say about the stock before the 14th of June? A I stated that it was licensed and bonded and the business supervised by the Banking Department, along those lines, and I told them to write in for information.

Q What did you say in your literature about it? A The same thing, "Licensed and bonded and supervised by the Banking Department."

Q Did you say it was a six per cent preferred stock? A Yes, sir.

Q Cumulative? A Yes, sir.

Q Participating in six per cent of the profits? A No.

Q Did you say there were dividends to be paid on it? A No, not until June 14th.

Q What did you say about the prospects of the stock as to income? A We did not dwell on that, just "six per cent participating, up to fifty."

Q Did you say anything about? A Six per cent participating up to fifty.

Q Up to the 14th of June you sold it on the basis that it was a six per cent stock? A Yes, sir.

Q Are you sure of that? A Yes, sir.

Q You never mentioned before the 14th of June that it was on a ten per cent basis? A No.

Q So then it was after you passed the resolution on the 14th of June making the dividend at the rate of ten per cent per annum, from that time on then you did broadcast and advertise that it was paying ten per cent out of earnings?

Mr. Vickers: I object to that portion which refers to his passing the resolution. The rest is all right.

Mr. Conlon: Withdraw the question.

Q The resolution of June 14th was made to your knowledge, wasn't it? A Yes, sir.

Q And after consultation with you? A No.

Q Didn't you so testify the other day? A I said that I knew that the dividend had been declared.

Q Didn't you say that you were consulted about it? A I did not. I was shown the figures, but that was after their meeting.

Q You were shown the figures. Did you know before the meeting that they were going to take the question up? A I don't remember.

Q Did you know before the meeting in December that they were going to take up the question to increase the price of stock and the dividend? A Yes, sir.

Q You knew it was going to be passed, didn't you? A Yes, I knew it was going to be passed.

Q You knew it was going to be passed before they held the meeting? A Yes.

Q Still, in this Christmas circular you sent out, blocked in red, you say, just as going to press with this issue of the Treasure Chest, "There comes welcome news of additional dividends?" A Yes, sir.

Q In spite of the fact that you knew before the meeting was held that the dividends were

going to be increased? A I don't remember the date that went to press.

Q That is your best answer? A Yes, sir.

Q You knew that you had the controlling voting power in the Universal Finance Corporation, you knew that the only voting power in the Universal Finance Corporation was in its common stockholders? A Yes, sir.

Q You knew that ? A Yes, sir.

Q You knew that you held more than fifty per cent of the common stock of the Universal Finance Corporation, did you not? A I, personally?

Q You personally. A No.

Q Your family. A No.

Q So, that you or your family, put it that way, could control any action of the Universal Finance Corporation if you so desired? A Yes, sir.

DALE DAVIS HOLLENBAUGH, one of the defendants, sworn.

Direct examination by Mr. Vickers.

Q Where do you live? A Roselle, New Jersey.

Q How long have you lived there? A About seven years.

Q Are you married? A I am.

Q Any children? A Two.

Q You live there with your wife and children? A I do.

Q At the organization of the Public Service Finance Corporation were you one of the organizers, stockholders and officers? A Yes, sir.

Q What office did you then hold? A President.

Q Do you still hold that office? A Still hold it.

Q Did you participate in the meeting changing the name of the corporation amending its certificate of incorporation some time in June, if that is correct? A The latter part of June.

Q You broadcasted over WABC in connection with the offer of the Public Service Sales Corporation the stock of the Public Service Finance Company, afterwards the Universal Finance Corporation, is that right? A That's right.

Q Under what name A Dale Davis, my first and second names.

Q How long had you at that time been broadcasting or using that name as a radio name? A Oh, possibly three years.

Q In this vicinity? A In this vicinity and others.

Q Newark, Jersey City and New York? A Yes, sir.

Q You have seen the radio talks of which photostatic copies are in evidence in this case, haven't you? A Yes, sir.

Q Some, or many of those talks were given by you, were they not? A Well, quite a few of them, yes.

Q When you gave your radio talks did you elaborate on the text which is in evidence here, or did you give it verbatim as written out at the time? A I gave it verbatim for the simple reason that we were limited as to split seconds, almost, on the air, and we could not improvise or do any extemporaneous speaking on the air; it was prohibited.

Q What is your best recollection as to the time when the broadcasting of the stocks of the Public Service Finance Corporation began? A To the best of my recollection it was about April 16th, starting on a Monday, making broadcasts nightly at seven and ten p. m. for four minutes each.

Q Now, there has been some testimony and an Exhibit S. 10 of a letter written on the stationery of the Department of the Attorney General, Division of Securities, addressed apparently to you. You received the original of that? A I did.

Q Under what circumstances did you receive the original of that letter and what did you do with it? A March 24th we were incorporated, and about four or five days later I dropped by to see Mr. Dewi T. Evans. I spoke to him and told him that I thought—

Mr. Conlon: I object, your Honor. I think as far as this witness is concerned the testimony is heresay.

The Court: Is there any necessity for all this verbal embroidery? Can't he tell us exactly how he got the letter?

Mr. Vickers: If your Honor please, it seems to me it is very material and relevant where persons are charged with conspiring with one another, to show to the jury—

The Court: As long as the conversations were between co-defendants, I see no objection to their testifying.

Mr. Vickers: That is the point.

A I told Mr. Evans that I was hopeful of getting the broadcast over one of the New York sta-

tions. I did not know which one it would be, because at that time I had not negotiated with any of them, but in my opinion, because of my previous radio experience, I would like to have the broadcasting go over WABC, because I knew the rates and they had a good coverage, which is a term used in the radio industry. I told him over there that I thought that in view of the fact of his connection with the Attorney General's office that we ought to have it on record that we had such a conversation. I had negotiated the talks and the radio time of the Plaza Loan Company, which is referred to in this letter, and I had from time to time dropped by, and at that time I did not know Mr. Evans except very, very casually. I dropped by to see him whether there were any complaints registered with the Department, because Mr. Evans—

Mr. Conlon: I object to this, your Honor. It is immaterial to this issue, the conversation between this witness and the defendant about something not in the issue.

The Court: I think now we have gone beyond the limits of what the conversation was by the characterizations of this defendant in his asides. I have no objection to his indicating the course of conduct that was pursued in obtaining this letter. I think he ought to be enjoined that that is what we are interested in.

By Mr. Vickers.

Q Mr. Hollenbaugh, with regard to obtaining the letter without giving your conclusions or reasons about the transactions and conversations directly with the defendant Evans, will you tell

us how and for what purpose the letter was procured? A I will try to. I asked him if there had been any complaints registered with regard to this form of broadcasting the Plaza Loan in the Department under his supervision, that part of his department. He said no.

Q Did you have anything to do with the broadcasting of the Plaza Loan? A I did.

Q Go ahead. A That is the reason the Plaza Loan was referred to in this letter.

Q Talks similar to this; is that right? A Yes. So then I said I thought that the—

The Court: Not what you thought. You are just going directly contrary to what Colonel Vickers has told you. Not what you thought.

Mr. Vickers: He says, "I told him I thought."

A (Continuing) Well, I said I felt that we should observe the same program as had theretofore been our custom, that if there were any complaints came in that he should certainly crack down on us right away, if there was such a thing, and in view of that the following day Mr. Evans confirmed that conversation in a letter to me, and I put it in my files.

Q You mean this letter ? A This letter right here.

Q This letter? A Yes.

Q Being Exhibit S. 10. Now, then, what has the course been taken by you with respect to the Department of Securities or Mr. Evans' department, whatever you want to call it, in your previous broadcasting of this other loan company?

Objected to as immaterial.

Objection sustained.

Defendants' counsel prays an exception to this ruling the Court.

Exception allowed; let it be signed and sealed and it is signed and sealed accordingly.

DANIEL J. BRENNAN,
Judge.

Q And you say you put that letter in your file. What became of it eventually? A I gave it to Mr. Clark of WABC.

Q Fix the time as nearly as you can, and the circumstances under which you gave it to him? A About five weeks after we went on the air, about April 16th.

Q April 16th? A We went on the air April 16th. About five weeks subsequent to that.

Q Now, just tell the Court and jury how you fix that time, if you can? A Went on the air April 16th. I had never seen Mr. Clark when the contract was signed. I then went to my mother's home.

Q Where? A In Pennsylvania.

Q When did you go there? A The night of the 16th or the morning of the 17th of April. Went to Pennsylvania and stayed there a week. Returned then about Wednesday of the following week. That would be after the 23rd I went on the air for the first time.

Q Well, beyond that how do you fix the time as approximately five weeks when you gave this letter to Mr. Clark? A But as I say, we sold the stock as we thought in three weeks time, but then because we had this unexpired time of thirteen weeks on the contract, Mr. Edwards ne-

New Jersey State Library

gotiated putting the Plaza Loan stock over WABC to give credit on that time. He didn't want to lose the money that he had contracted for and had to pay, and that time I went to see Mr. Evans and he sent another letter that has been put into evidence, direct to WABC. Now, that will hook these two letters up according to my recollection.

Q You mean Exhibit S. 11? A Yes, sir. After, my recollection serves me, after I gave that letter, the second letter mentioned.

Mr. Conlon: I object to that. There is no question.

The Court: That is voluntary. The objection will be sustained. Strike it out.

Q Did you in connection with this broadcasting at any time after April 16th see Mr. Clark or Mr. Collis respecting the character of the talks or the character of the business? A Why, yes. Just subsequent to the time that Mr.—that I gave this first letter to Mr. Clark, shortly after that.

Q Wait a minute. A I would like to finish that particular point up.

Q Wait a minute, let me finish it, will you? A All right, sir.

Q The letter addressed to you was the first letter I handed you, S. 10? A Yes.

Q Now, then, do you call that the first letter? A Yes.

Q When did you give that to Mr. Clark? A About five weeks after we first went on the air.

By the Court.

Q When was that? A We went on the air April 16th.

Dale Davis Hollenbaugh, direct.

By Mr. Vickers.

Q What has the letter of May 25th, S. 11, to do with the time when you gave S. 10 to Mr. Clark? A After Mr. Clark got the letter, the latter letter.

By the Court.

Q After he got the second letter, you mean? A The second letter. After he got the second letter he then one day asked me, he said, "Have you anything that you can give me to finish up, close up my files." That is the remark he used, and I said, "Yes, I think I have," and I went back to look over some stuff and took this letter along with a couple of other papers and gave it to him.

Q And you say approximately that was five weeks after the 16th of April, is that right? A That is right.

Q What communication, if any, had you with Mr. Collis and Mr. Clark, Mr. Collis referred to being the man in the Better Business Bureau? A Mr. Clark and myself went to see Mr. Collis. Mr. Collis said that he had had some inquiries regarding the offer, and he said he had received a contract and he said he took exception to something in that contract.

Q What was it?

Mr. Conlon: I object.

The Court: I sustain the objection.

Mr. Vickers: We are talking about subscriptions.

The Witness: Subscriptions?

Q Is that the subscription contract that you refer to? A Subscription contract.

Mr. Conlon: I have no objection to the subject of the conversation, but I object to all the details of the conversation.

The Court: What he said. Was there a subscription contract?

Mr. Vickers: In evidence?

The Court: Yes. Is there a subscription contract in evidence?

Mr. Vickers: Oh, yes.

The Court: Why couldn't he indicate what, if any part, he objected to?

Mr. Conlon: Because, your Honor, that is heresay. I have not got Mr. Collis to check up with the witness on any conversation he had with Collis. It can't be binding on the State.

Mr. Vickers: Didn't the State produce Mr. Clark and bring out this very fact? Isn't it all here in evidence that there was a complaint at one time and aren't we entitled to show how this later thing arose and what was done?

The Court: Didn't Mr. Clark testify to conversations with Mr. Collis of the Better Business Bureau?

Mr. Conlon: I do not remember that he did, your Honor, at least on direct examination.

The Court: I am quite sure he did.

Mr. Conlon: Suppose for the sake of argument this witness should testify that Mr. Collis looked at this thing and said it is wonderful. That would not be binding.

Mr. Vickers: It would be all right if he said it was a rotten deal.

The Court: No, I think in either regard it would be equally objectionable. I sustain the objection.

Mr. Vickers: I agree with you that it is his opinion, but if it is pointed out, your Honor, I want to invite your Honor's attention to this: If it is pointed out that they corrected a situation objected to on the advice of the Better Business Bureau and Mr. Clark, that that is the only objection that was made by these people who were interested in the thing.

Mr. Conlon: I have no objection to that.

The Court: He has no objection to that. The objection is the specific reference in the absence of an opportunity to cross examine.

Q What part of the subscription contract was it that Mr. Collis objected to?

Objected to.

Objection sustained.

Defendants' counsel prays an exception to this ruling of the Court.

Exception allowed; let it be signed; and it is signed and sealed accordingly.

DANIEL J. BRENNAN,
Judge.

By Mr. Vickers.

Q I show you Exhibit D. 2 for identification and I call your attention to the second last clause, this being the Armour subscription contract, and I ask you whether or not your conference with Mr. Clark and Mr. Collis was relative to that?
A It was.

Q Subsequent to that conference what if anything was done respecting the particular clause? A The clause was deleted from the contract.

Q Thereafter? A Yes, sir.

Mr. Vickers: For the purposes of the record I desire to read that clause, but first of all I will offer this contract in evidence which has been marked D. 2 for identification.

Mr. Conlon: No objection.

(D. 2 for identification is marked Exhibit D. 2.)

Mr. Vickers: The clause being, "No statements or representations that are not contained in this agreement shall be binding on the subscriber or the corporation."

Q When the final checkup was made of the number of shares of the 25,000 offered that had been sold, had the issue been sold out or were there then some remaining shares? A There were then some remaining shares left unsold.

Q Did all of those remaining shares, or whatever the remaining shades were, remain with the company by reason of no subscriptions or some come back as cancelled subscriptions? A Some came back as cancelled subscriptions. Yes, there were.

Q After the ascertainment of those figures that there were remaining shares of stock of the 25,000 shares issued, were those sold either by putting on the air or by circulars or any other way? A They were sold during the latter part of the summer.

Q At any time prior to the 14th day of June, 1928, which was the date of the declaration of the dividend, did you or anyone with your knowledge broadcast concerning a ten per cent. dividend or ten per cent. dividend basis for this stock? A No, sir.

Q What took place at the directors' meeting on June 14th? Respecting the declaration of a dividend in addition to what is in the minutes themselves? A We had the meeting, and Mr. Evans, as treasurer, reported to the directors as to the outcome of the first quarter's operations.

Q You voted for the declaration of a dividend? A I did.

Q At the time you voted for the declaration of this dividend did you thereby intend to make any false representation or representation of the facts known to you to be untrue?

Mr. Conlon: That is objected to.

The Court: Sustain the objection.

Q Did you knowingly, either by radio talk, by advertisement, by talk with any subscriber or prospective subscriber, did you knowingly make any statement which you knew to be untrue?

Mr. Conlon: I object.

The Court: Objection overruled.

Mr. Conlon: If your Honor please, I think that there is a different objection aside from any other in the question, and that is the use of the word "knowingly," If he made representations of the things that were under his eyes and closed his eyes to it, I think he is criminally liable.

The Court: Whether he should have known may be a question of fact. I think he could testify as to whether or not there was any active misrepresentation by him and deny that. Whether there was a passive or an inferential misrepresentation is a fact question.

A I did not.

(The Court takes a recess from one to two o'clock p. m.)

After Recess.

By Mr. Vickers.

Q Can you tell approximately when the remaining shares of the 25,000 share allotment were offered for sale and by what means? A During the later summer or early fall, by means as the radio, and so far as my knowledge is concerned by means of the radio.

Q When you say the later summer, give us the month. A As late as September.

Q As late of September? A Yes, sir.

Q Beginning when? A Along in August.

Q Could you tell us approximately how many shares of that 25,000? A I think about the last 2,000 shares, something of that sort.

Q Can you, without reference to any memorandum, give us the figures which were given to you by the treasurer of the company, at or about the time of the June meeting, when the dividend was declared? A I think approximately. Yes, Colonel.

Q All right, what figures were then discussed? A The figures that were discussed were the income from the loan, income from various sources, income from the interest on bonds and investments of stocks. Certain rights we were then entitled to and other data of that nature.

Q At the time who had the figures? A Mr. Evans.

Q In what form? A He had them set down in a memorandum form on a piece of paper.

Q Since that meeting have you seen the figures which he then had and which you took into account at the directors' meeting? A Yes, I have.

Q When after that time was your attention called to them and did you first see them? A Along in January in Mr. Hobart's office when preparing for the Court of Chancery proceedings.

Q I show you a piece of paper containing on one side apparently shares of stocks and securities in typewriting and on the other side some figures and I ask you whether you can tell us whether that was the sheet of paper used at that time, the figures being before the Board of Directors at the meeting of June 14, 1928? A To the best of my recollection that is the exact document.

Mr. Vickers: I offer this paper for identification.

(Same is marked D. 23 for identification.)

Q With respect to the declaration of the September dividend from whom and in what manner did you get whatever information you had

voting for that dividend? A A regularly called meeting of the Board of Directors. The treasurer was instructed to give a report at which time Mr. Evans produced the figures and gave us the information contained on the paper you have.

Q When you say "the treasurer," that means Mr. Evans? A Yes, sir.

Q What about the September meeting? A That was identical with the former one.

Q I call your attention to what purports to be the minutes of the Universal Finance Corporation held December 5th, and ask you to look at them and say whether or not they are the minutes of the corporation? A That is right.

Q Signed by you and signed by Mr. Evans, the secretary, is that right? A That is my signature and it looks like Mr. Evans.

Q As a matter of fact those are the minutes, are they? A Yes.

Mr. Vickers: I offer the minutes in evidence.

The Court: The minutes of that meeting you offer?

Mr. Vickers: Yes.

The Court: Is there any objection?

Mr. Conlon: Your Honor, I understand that these minutes of this meeting are going to be offered. If they are going to be offered separately I have no objection. Have you any objection to that, Colonel?

Mr. Vickers: No.

(The same is received in evidence and marked Exhibit D. 24.)

Cross examination by Mr. Conlon.

Q When did you stop broadcasting over station WGCP? A In what matter, Mr. Prosecutor?

Q In connection with the sale of stock of the Universal Finance Corporation. A I think the —to the best of my recollection the only time that we broadcast over WGCP that we have any knowledge of was the night of the election when courtesy programs went out over the air.

Q You mean in November? A In November, yes.

Q Did you have a contract with WGCP? A No.

Q The Plaza Loan advertised over WGCP, didn't they? A Yes, they did, because I put on the programs for the Plaza Loan. I mean the musical work.

Q At the tail end of the Plaza Loan campaign did you also broadcast for the Universal Finance Corporation over that station? A Not to my knowledge, no.

Q You were president of the Universal Finance Corporation, were you? A Yes, sir.

Q And in the inception in that business, as I understand, you invested $250.00 cash and gave the company a note for a thousand dollars, is that correct? A And bought 35 shares of preferred stock.

Q Will you just answer the question, please? A Yes.

Q You will get a chance to say everything you want and save a lot of time. A I want to be just as helpful as I can.

Q Your counsel will be here and he will be very helpful to us. In the business you invested $250.00 cash and gave a $1,000 note, is that correct? A Yes, as far as that goes that is true.

Q That was the investment in the capital stock of this company? A No, sir, that was for common stock. I also bought preferred.

Q That was the investment in the common stock of the company? A Yes, in the common stock of the company.

Q Did you invest anything in the preferred stock? A Yes.

Q How much? A I bought 35 shares to start with.

Q What did you pay for them? A Paid par, $10.

Q You paid $10 a share for them? A I did.

Q That is $350? A Yes.

Q Do you still hold them? A I do.

Q Is that the only investment you made in the preferred stock? A That is.

Q How much money did you take out or did you receive, either from the Universal Finance Corporation or the Financial Investment Company from the period beginning April and ending December, 1928? A From the Universal Finance Corporation I have never received one cent. From the Investment Finance Corporation in the neighborhood, I think—I am basing it on something that you remarked in the court room the other day—around $10,000.

Q What was your business before you entered into this enterprise? A You mean how far back or immediately before?

Q Immediately before. A Immediately before the work that I was doing here I was working on, working for Mr. Edwards, putting out programs for the Plaza Loan Society.

Q You were a radio broadcaster? A Yes.

Q In that respect you received a salary? A I did.

Q For that radio broadcasting? A Not alone as a radio broadcaster. In other words I went out and got contracts, arranged for the talent, possibly sold the contract to a patron who sponsored the program, and then I went and sold it in turn. In other words, I was a broker in radio terms.

Q How long were you in that business? A Approximately off and on possibly three years.

Q You were the president of this company from its inception, were you not? A I was, sir; yes, sir.

Q Were you thoroughly familiar with all of its business transactions? A Yes, sir, that is, that came under my general supervision.

Q You were also active in the campaign for the sale of the stock? A Only in putting on the talks. That was all.

Q Did you assist in the preparation of any of the literature? A No.

Q Did you see any of the literature? A No.

Q Were you consulted about any of it? A They referred it to me, yes.

Q You have seen the literature, exhibits that are in evidence. That literature was disseminated with your knowledge and consent? A I knew it was going out; yes, sir, with my consent.

Q Then it was disseminated with your knowledge and consent? A It was.

Q The radio talks were drafted by you and partly by other members? A Mr. Edwards wrote practically all the radio talks, and with due respect to Mr. Edwards, I would go over them for the matter of structure of the contents; I mean the English structure and punctuation and things of that sort.

Q They were all sent out with your knowledge and consent? A Yes, all that I ever put out or ever saw.

Q You saw all of them, didn't you? A I couldn't say that. I was away during possibly two weeks during the summer; I don't know what went on then.

Q Aside from the period that you were away for two weeks in the summer, the rest of the radio talks went out with your knowledge and consent? A Absolutely, sir.

Q During that period you were in active charge of the business as president of the Universal Finance Corporation? A Yes.

Q Mr. Hardy was your office manager? A Mr. Hardy was the office manager, yes.

Q He had to do with the conduct of the small loan business? A Yes. My interest was more with the small loan business than anything else.

Q I did not ask you that. A That's right.

Q These representations I am about to state were made in connection with the sale of this stock to the general public with your full knowledge and consent, were they?

Mr. Vickers: I object.

The Court: It is not what they are yet. Sustain the objection.

Mr. Conlon: I will read them.

The Court: Read them to him first, and then ask him.

Q Was there sent out to the public this representation with your knowledge and consent, "This is a six per cent. participating, preferred stock, which means after the six per cent. is set

aside for dividends one-half of the remaining net profits are distributed to holders of this stock''? A Yes, sir.

Q Was this ''Broadcasting security offerings over the radio is permitted only after a very thorough investigation''? A That is so.

Q I am not asking you if that is so, I am asking you if that was sent out to the public with your knowledge and consent? A Yes, sir.

Q ''The business is under the supervision of the Department of Banking & Insurance of the State of New Jersey''? A Yes, sir.

Q ''Now paying dividends of ten per cent. per annum, which is to be increased to twelve per cent. on January 1, 1929, all out of the earnings and still adding to surplus account''? A Yes, sir.

Q ''The treasurer of the corporation, Mr. Dewi T. Evans, is State Examiner in the Division of Securities in the Attorney General's Office, Trenton, New Jersey''? A I didn't know that went out.

Q Did you know it went out earlier in the campaign? A Yes, I knew that.

Q It had been stopped by Mr. Plumer? A Stopped by Mr. Evans, as far as I knew.

Q Did you know this went out, ''All detail work is in the hands of Haskins & Sells, one of the leading firms of certified public accountants in the United States?'' A I didn't know at that particular time, but I knew it had in the literature.

Q '''Finally an increase of dividend rates will naturally cause a sharp increase in the price of these shares''? A I didn't know that went out. As a matter of fact I never saw that particular letter until the other day when it was produced in court.

Q Had it been discussed with Mr. Edwards? A I don't recall that it had, no.

Q You don't recall that it had been discussed with Mr. Edwards? A No, sir.

Q When you say discussed before that day, what do you mean? A Well, we had been watching the growth of the company and would say for instance, if you want an example, "Today things are coming along well and the income of the company looks as if we are going to be able to increase the dividends," or words to that effect.

Q When was the first day it was definitely decided to declare this dividend? A Possibly a few days before this date.

Q You mean a few days before that date you had a discussion and decided to declare a dividend? A No, we didn't decide to do it, because Mr. Evans' figures had not been compiled at that time.

Q The first time you saw Mr. Evans' figures was at this meeting? A Yes, sir.

Q You had not seen them before? A No.

Q When was it first decided to declare this dividend? A I would say under the conditions it was decided this particular date.

Q I do not want you to say, "under these condition." I am not creating any conditions.

Mr. Vickers: It seems to me that that is entirely responsive to the question.

The Court: I will let the answer stand.

Q When I say "definitely decided," I mean to express the thought that when did you and Mr. Evans both finally agree that the dividend would be declared? A On December 5th.

Q Had it been discussed with Mr. Edwards? A I don't recall that it had, no.

Q You don't recall that it had been discussed with Mr. Edwards? A No, sir.

Q When you say discussed before that day, what do you mean? A Well, we had been watching the growth of the company and would say for instance, if you want an example, "Today things are coming along well and the income of the company looks as if we are going to be able to increase the dividends," or words to that effect.

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Q I do not want you to say, "under these condition." I am not creating any conditions.

Mr. Vickers: It seems to me that that is entirely responsive to the question.

The Court: I will let the answer stand.

Q When I say "definitely decided," I mean to express the thought that when did you and Mr. Evans both finally agree that the dividend would be declared? A On December 5th.

Q You do not mean December 5th? A Yes, that is what it says, December 5th, 1928, at four o'clock.

Q Pardon me; I am referring to the wrong minutes. Do you remember the meeting of June 14th? A Yes, sir.

Q Do you remember the dividend declared at that meeting? A I do.

Q Who was present at that meeting? A If my recollection serves me right, Mr. Tappan, Mr. Fitzmaurice, Mr. Evans and myself.

Q It was decided at that meeting to declare a dividend? A Yes, sir.

Q Had the declaring of that dividend been decided upon before the 14th of June? A No, sir.

Q Are you sure of that? A I am sure it wasn't decided before the 14th of June.

Q Do you know the figures that Mr. Evans produced at that meeting? A I could identify them.

Q Had you ever seen those figures at that time? A Not in that form, no.

Q In other words, as I understand it, you came into that meeting on the 14th of June, and there discussed the wisdom and the practicability of declaring a dividend? A If you say "definitely decided," yes, that day naturally before the dividend is declared there is always considerable depression among the members unofficially.

Q You have no confusion with the words "discussion" and "decision"?' A I have not, no.

Q I have not either. Do you remember being at a meeting of the Board of Directors on the 12th of June, which was two days before the June dividend was declared? A I think I was, yes, sir.

Q Do you remember at that time voting in favor of a resolution opening a dividend account in the Broad & Market National Bank and depositing therein $1,208.75? A That was done. Yes, I voted for it.

Q That amount of $1,208.75 was the exact amount to a penny that was the dividend actually paid out on the 30th day of June, is that correct? A Yes, sir.

Q That is correct? A I think so. If my recollection is right.

Q So, on the 12th of June you opened a dividend account in the bank? A Yes, sir.

Q And you deposited in that account the exact amount of the dividend which had not yet been voted, is that correct? A I didn't deposit it. I don't know.

Q Well, was it deposited? A There was a dividend deposited, yes.

Q I will strike out "you deposited." Possibly your office boy did. But there was a deposit in the bank of the exact amount of the dividends subsequently declared, is that correct? A Yes, I will say yes. I won't go any further in what you are telling me.

Q Are you sure? A I am not sure, no.

Q Would you say that did not happen? A There was a dividend for that amount deposited in the Broad & Market National Bank at some time around that time, but I wouldn't know when.

Q That was two days before the meeting declaring the dividend? A I don't know if it was.

Mr. Conlon: I ask for the introduction of the minutes.

Mr. Vickers: We will concede that it was. Certainly we offer the minutes in evidence.

The Court: It is conceded that it was, Mr. Conlon.

Mr. Conlon: I had better get that from the witness.

The Witness: I am perfectly willing to concede that, Mr. Conlon.

By Mr. Conlon.

Q I don't want you to concede anything. I show you a page from the minutes purporting to be the minutes of June 12, 1928. Is that your signature? A Yes, sir.

Q And those are the minutes? A Yes, sir.

Q At that meeting was this resolution adopted: "After a full discussion the following resolution was moved and adopted by the unanimous vote of all present," there being present you, Tappan and Edwards, is that correct? A Yes.

Q Fitzmaurice wasn't at that meeting, was he? A Apparently from the minutes he wasn't, no.

Q Have you any reason to feel that the minutes are incorrect? A No, I am not trying in any way to have Mr. Fitzmaurice's name brought into it.

Q "Resolved, That the dividend amount in the sum of $1,208 be opened with the Broad & Market National Bank & Trust Company of Newark, New Jersey, against which all dividend checks on preferred stock shall be drawn." Is that correct? A Yes.

Mr. Conlon: We want that marked for identification.

(The same is marked Exhibit S. 21 for identification.)

Q Now, Mr. Hollenbaugh, do you know whether or not that amount that was ordered deposited in the bank was the exact amount of the dividend paid out? A Yes, I think it was.

Q Then it is a fact, is it not, that before the meeting of June 14th it had been decided by you and Evans and Tappan to declare this dividend? A Apparently, the way that looks. According to my recollection the dates are reversed.

Q That was before you saw the figures you say Evans showed you at the meeting of June 14th? A Technically the way you put it, yes.

Q Is there anything technical about the way I put it? A I wouldn't say so.

Q Is that correct or incorrect? A I will admit that that minute and the two minutes referred to are exactly as you say, Mr. Conlon, and that those acts took place according to the minutes.

Q Just to explain something in the minutes which were introduced by Colonel Vickers of the meeting of December 5th, was a resolution passed to this effect: "Further resolved, That the Universal Finance Corporation accept a note in the sum of $20,000 from the Financial Investment Company in consideration of the exclusive contract for the sale of 20,000 shares of six per cent. participating stock, and that the Financial Investment Company be retained as sole fiscal agents for any future financing of the corporation." Do you remember that? A Yes, sir.

Q Was that note ever paid? A I think not.

Q You know not, don't you? A It wasn't paid.

Q As a matter of fact, on December 24th, after you had been before Mr. Plumer, there was a resolution passed to this effect, "That in view of the publicity which individual loan corporations have lately been receiving, decided to cancel contract of December 5th with the Financial Investment Company." A That is right. Therefore the note was cancelled. The note was returned.

Q In reference to this letter from Mr. Evans on the letterhead of the Attorney General, do I understood you correctly when I understood that you got that from Evans for your own use in placing it in your file? A That is exactly what it was gotten from Mr. Evans for and put in my file.

Q You didn't get it for the purpose of turning it over to Mr. Clark at all? A Positively not.

Q Mr. Clark had not spoken to you? A He did not. I did not speak to Mr. Clark for three weeks after the letter passed to me.

Q Did Mr. Edwards tell you about it? A He did not.

Q Did Mr. Edwards have any conversation with you about the approval of the broadcasting that you were doing? A Who? To me?

Q Did he speak to you about the approval of the broadcasting that you were doing? A No.

Q When you started to broadcast from WABC— A There was no approval.

Q Just a minute. When you started broadcasting from WABC, was there any conversation between you and Edwards and Evans as to getting the approval of the station? A None whatever.

Q You simply went in there and broadcast without being questioned at all A I didn't say that.

Q Were you questioned? A I was, certainly.

Q By whom? A By Mr. Horst. Either his name was Rudy or Horst, I don't know which, but at any rate this salesman came over to Newark and we discussed the matter of broadcasting and he went away and I think it was three days before he returned and then came back with contracts which I would not allow Mr. Edwards to approve. The rate was too high.

Q Never mind that. When was the first time there was ever any question raised with you as to the propriety of your broadcasting and some indication that your situation was sufficient to allow you to broadcast over the station? A He asked me for references the first time I was there. I was trying to fix the date by coming back. It was about six days before the contract was signed.

Q You got this letter from Evans as a precaution? A No, sir.

Q What did you get it for? A Exactly as I have testified to.

Q Tell me again. A You wouldn't let me tell you this morning. Do you want me to tell it now?

Q Not only want you to, but I will let you. A Finally it will come out. When I first went to see Mr. Evans regarding the matter of broadcasting securities generally was possibly seven months before this time—

Q I am afraid to save time, Mr. Hollanbaugh, I won't ask you this. A I would like to, though. I really would if I can get it concisely enough.

Mr. Vickers: Wait a minute. Will you stop? Will you stop chattering?

The Court: I do not know that you need ask the Court's indulgence when you put it in that form. That is even better than I could do.

Mr. Vickers: It was not exactly fair to the witness, but it provokes me when the witness won't stop when I rise to enter an objection. I think the witness, in view of the Prosecutor's statement, that he wants an explanation, that it was not given to him, and he said he would let the witness tell his story, I think he ought to be permitted to do it.

Mr. Conlon: I stopped, your Honor, for the same reason that the Colonel did.

Mr. Vickers: No, no, you didn't. I stopped him because he was interfering with me. You stopped him because he was interfering with you.

The Court: You gave such a perfect statement of the conditions, I see no reason why the Court should interpose judicially. I have no desire for these oratorical flurries myself, because they do not tend to shorten the trial. You indicate what you want, Mr. Conlon, by questioning.

By Mr. Conlon.

Q Will you please answer my questions? You anticipated that you would be called upon by the station to give some evidence of your standing which would warrant you broadcasting the stock sales, is that correct? A That was not the intent of that letter, no.

Q I didn't ask you that. A Yes.

Q Was that correct? A Yes. Over a station.

Q Over WABC? A No, sir. I wrote to seven differend stations. I did not know what station I was going to broadcast from at that time.

Q But you did procure this letter from Evans with the idea of using it if necessary to establish—

(A brief recess is taken.)

Q Can you tell briefly, Mr. Hollenbaugh, just in order to save time, why you got the letter? A Mr. Evans confirmed our conversation which I had that day. That was simply all there was to it.

Q And that was the purpose of your record? A Of my record.

Q Without any idea of using that letter in the future? A Absolutely none.

Q You never anticipated using that letter in the future? A I certainly did not.

Q You took that letter from Evans, who was the treasurer, and put it in your company's file? A Yes.

Q He was the treasurer of your company? A Yes.

Q To serve what purpose? A He was also in charge of the function of the Government.

Q I understand that, and putting that letter in your file served what purpose? A Served the purpose of confirming the conversation which we had had at that time.

Q What was the reason for that? A Why, because I was—I went to him exactly in the case of this company as I did when I went to him in the case of the Plaza.

Q What was the reason for confirming the conversation? A Isn't that customary?

Q I don't know. I am asking you. A It certainly was. That was the purpose of it.

Q Did you confirm any other conversation that you had with Evans? A That was the only conversation of our business that would be necessary.

Q Did you confirm any other conversations that you had with Evans by letter? A No.

Q Why did you confirm this conversation? A Because this related to this company.

Q Did you have other conversations with Evans which related to this company? A No, nothing more than just exactly in our capacity as directors of the company.

Q That was the only conversation you had with Evans that related to this company, is that right? A To which company?

Q I am using your words. A No, certainly not. We had lots of conversations relative to the Universal Finance Corporation.

Q You have not now possession of the statement of the figures that Evans gave you or showed you in June, have you? A No, I have not.

Q You do not care to produce them at this time?

Mr. Vickers: He says he has not got them.

A I do not have them.

Q You do not have them? A No.

Q You saw them a moment ago? A When it was brought into evidence here; yes, sir.

Q You do not care to make any effort to produce them at this time?

Mr. Vickers: I do not understand. The witness says he has not got them. They

were just produced and are there. I have not any objection to the State seeing them if he wants them.

Mr. Conlon: That is exactly what I wanted this morning and you refused.

Mr. Vickers: That was a different proposition asked from somebody who was not connected with this company. No objection at all to your seeing them.

Q Mr. Hollenbaugh, do you of your own knowledge, and when I say your own knowledge, I want to explain what I mean so we will have no confusion. I mean from your personal knowledge as president of this company, from the books of the company, or from a statement produced directly from those books. Did you of your own knowledge know on June 14, 1928, when the dividend was declared, whether or not those dividends were coming out of the earnings of the company or not? A Yes.

Q Will you answer that question yes or no? A Yes.

Q Was your knowledge at that time that they were coming out of earnings, or that they were not? A That they were.

Q That they were? A Yes.

Q As to the dividend that was declared as of December 30th, did you at the time it was declared know of your own knowledge whether or not those dividends were coming out of earnings? A Out of surplus and earnings. I should have said that in the case of the June dividend.

Q Mr. Hollenbaugh, I know this is hard for you and hard for me. Will you try to answer this? At the time the dividend was declared on June 14th to be payable as of July 2nd, did you

know of your own knowledge whether or not those dividends could be paid out of earnings? A Out of surplus and earnings.

Q Will you answer the question? A Yes, out of earnings.

Q Your answer is out of earnings? A Yes, sir.

Q As to the dividend that was paid as of October 1st or September 30th, whenever the date was, did you know of your own knowledge that that dividend was declared—whether or not those dividends could be paid out of earnings? A Earnings.

Q You did? A Yes.

Q And as of the dividend that was declared in December to be paid at the end of the year? A The same thing.

Q What did you mean a moment ago when you said out of earnings and surplus? A Because as I understand it a dividend should be out of surplus and earnings; that is the way a dividend is declared, usually.

Q Yes. A Now, if you want me to state it was paid only out of earnings, it first goes into the combination as a surplus, whether an earned surplus or whatever it is derived from, and then a dividend is declared out of that surplus. You cannot declare it out of anything else.

Q Then, am I correct in saying when you said "earnings" you meant "earnings and surplus"? A Earnings and surplus.

Q Now, answer my question. A You have to put earnings into surplus first.

Q That is not answering my question. A I will try to do so.

Q When the dividend was payable on June 14th to be payable July 2nd, did you then know of your own knowledge whether then the dividend could have been declared out of earnings? A They could have been, yes.

Q You knew that then? A Yes, sir.

Q Were those dividends paid out of earnings?

Mr. Vickers: That is objected to on the ground there is no obligation to pay dividends out of earnings, and it is merely a matter of his notion as to what the dividend was actually paid out of. It was paid out of the books of the company and no witness can testify in dollars and cents whether he paid out of one thing or another.

The Court: He may know from what was on the statement, what composed the principal amount of this dividend. Whether or not the payment must be out of earnings is a question in my personal judgment, but whether or not calling a new surplus makes it a surplus is a different question. The Court's notion of surplus has always been the surplus established on the capital account of any corporation.

Mr. Vickers: That is not the point of my objection. Suppose there is a surplus, whether properly accumulated or not, and that is added to with earnings, how can a witness say out of which of that combination a thing was actually paid? It was paid out of the funds.

The Court: He cannot say and he has not said. The limit of his answer, as I understand it so far, has been earnings and surplus. He has amended it to surplus.

Q (Question read.)

Mr. Conlon: This goes to the very gravaman of the charge. This was a representation that was made.

The Court: How can he tell whether they were subtracted from any particular funds, I mean if there was an account? He might be able to answer it if there was a so-called earnings account.

Mr. Conlon: Surely, if any dividends were paid out they would be charged first to earnings before charged to surplus.

The Court: They may have been charged generally. That of course is the usual business theory.

Mr. Conlon: To make it clear I will withdraw the question.

Q Do you know as a matter of fact whether the dividend for July 2nd was more than the net earnings of the company? A No, it was not.

Q Is your answer the same as to the dividend of September 30th and December 31st? A Identical.

Q Now, you are generally familiar with these figures, are you? A Well, not very. In a general way. I couldn't tell you what they are composed of or what the component parts of it were; you will have to call on the treasurer for that.

Q Do you know whether or not up to the 30th day of June, eliminating everything from your consideration, except the business of making small loans, whether or not the income from that business was sufficient to pay a dividend of $1,200?

Mr. Vickers: That is objected to as immaterial and not within the scope of this indictment.

The Court: I think there has been sufficient representation to the effect that the earnings of the small loan business will affect a question of that character. Overrule the objection.

Mr. Vickers: That is not in the indictment, your Honor. I know that your Honor does not want to rule on something that is not in the case.

The Court: My distinct recollection is that the earnings were out of the small loan business.

Mr. Vickers: No, I respectfully submit that your Honor is entirely wrong. The business of the corporation was spoken of as a small loan business.

The Court: And the earnings have been such as to warrant so and so.

Mr. Vickers: Never was there a representation, any piece of literature broadcasting that limited these earnings as coming from the small loan business.

The Court: I think that was the inference that went forth in the radio talks.

Mr. Vickers: They are here in evidence, your Honor, and I hope your Honor will reserve decision in your ruling on them until you see them, because they are to be an entirely different phase of it in this action.

The Court: It contains an inescapable inference in my judgment.

Mr. Vickers: What is that, your Honor?

The Court: Let me read that "Treasure Chest of Modern Finance."

Mr. Conlon: Yes.

(The Court reads the pamphlet.)

Mr. Vickers: It has no relation to the fact that there is an exclusion, not at all.

The Court: Oh, yes.

Mr. Vickers: Here are securities to the extent of $150,000.

The Court: It follows the answer in confirmation of what went before. It is the general development of the fact that this corporation is recognized to do an industrial loan business where the rates of interest are very much higher, by reason of the character of the security and the character of the customer, and running through that is the thread of suggestion that by reason of that fact the earning power of money is much greater and that follows along that general line in the "Treasure Chest" almost to the exclusion of any other form of investment. This money is to be invested in industrial small loan business on a basis of three per cent interest a month.

Mr. Vickers: There isn't even a suggestion of that in the indictment.

The Court: There is a suggestion of representations generally fraudulent.

Mr. Vickers: Such a representation would not be good, a representation generally.

The Court: There are a series of representations in the indictment as to false statements of fact. There is too an implication there, a representation that the earning power of this corporation from the industrial

small loan business produced the funds which warranted this dividend.

Mr. Vickers: Not in the indictment.

The Court: I do not say in the indictment. In the testimony.

Mr. Vickers: If there is such testimony here it surely cannot be relevant or material under this indictment. If there is no charge anywhere either in the charging part of the indictment of any overt act alleged, that any such representation is made. If there is such testimony it has escaped us. I respectfully submit that our entire line of defense and objection would have to be on the different lines if there was such an intimation as that.

The Court: There is a charge in the indictment of the payment of this dividend out of the assets of the corporation.

Mr. Vickers: Of the earnings.

The Court: Although the dividend had not been paid.

Mr. Vickers: Yes, but certainly no limitation as to the small loan business.

The Court: No limitation as to the small loan business, correct.

Mr. Vickers: That is the gist of this question.

The Court: But a pertinent point of inquiry as to what the proceedings were in the dividend in view of the representation of the stockholders that this enormous profit was all made out of the industrial loan business.

Mr. Vickers: That would not be objected to by us, but we do object to the question

which implies that we ever made a representation that our dividend was limited to the small loan business.

The Court: That your dividend was limited to the small loan business?

Mr. Vickers: Yes, that is the pertinency of this objection of ours.

The Court: That is what the treasurer just says.

Mr. Vickers: I respectfully submit that you might draw that inference.

The Court: There is no other inference capable of being drawn, if I have an understanding of the intent of the language.

Mr. Vickers: There isn't a misrepresentation in any of the statements made, your Honor. The earning power on the small loan business is similar, if your Honor should draw a deduction from the evidence in any charge against these defendants.

The Court: When the representation is made that an enormous profit is being made for the engagement of capital in the industrial loan business, when such is not a fact.

Mr. Vickers: Such is the fact.

The Court: You do not seriously contend that the great bulk of the profits, if such there was, in the operations of this company within the first six months was made in the industrial loan business?

Mr. Vickers: No, that does not say so. Here is the statement as to the earning power of capital in the small loan or industrial loan business.

The Court: Yes, and it cannot be considered by itself, it must be considered as

part of the whole in reference to the engagement of this corporation in this particular kind of enterprise.

Mr. Vickers: Can your Honor construe anything there set out as to a representation which amounts to a false pretense under the law?

The Court: There have been several representations as to the business in which this corporation was engaged and its profits growing out of that business, not by reason of the advantage that may accrue to it, by investing in other securities, but by reason of three per cent. a month, the reason of this higher character of its investment, and that is along that tenor.

Mr. Vickers: It doesn't say that any of the earnings of this company have been acquired in any preparation establishing this statement as to the earning power of money.

The Court: As far as any inference is concerned it points that everything they have gotten they got out of the small loan business.

The objection will be overruled.

Mr. Conlon: I think I have forgotten the question now. Will you read the question, Mr. Stenographer?

Q (Question read.) A No.

Q The income is not sufficient? A It is not sufficient.

Q Do you know whether the gross income was more than the expense, that is the gross income of the loan business alone?

Mr. Vickers: I make the same objection.

The Court: Same ruling.

Defendants' counsel takes an exception to this ruling of the Court.

Exception allowed; let it be signed; and it is signed and sealed accordingly.

DANIEL J. BRENNAN,
Judge.

A No, I think the loan business for that particular time of June, operated at a loss.

Q In other words the expense of the business was more than the income from the small loan part of the business? A Yes, sir.

Q Now, as to the period ending September 30th,—was the dividend then which amounted to some $2,500, did that exceed the amount earned by the company in the small loan business?

Mr. Vickers: I make the same objection to this entire line of testimony.

The Court: There will be the same ruling.

Mr. Vickers: May I have an exception?

The Court: Yes.

Defendants' counsel prays an exception to this ruling of the Court.

Exception allowed; let it be signed; and it is signed and sealed accordingly.

DANIEL J. BRENNAN,
Judge.

A I cannot answer that. I am of the opinion that there was not sufficient earnings from the small loan business to have paid that dividend.

Q What about December? A There I am simply at sea. I cannot tell you.

Q You were satisfied of the June period. A I am satisfied of the June period, yes, and I am of the opinion of the September period.

Q That there wasn't enough earnings from the small loan business to pay those dividends? A Yes, sir.

Q In June there was a loss on the operations? A On the operations of the loans there are.

Q Your assets, during that six months ending September 30th consisted of these, and correct me if I am wrong. Assets that amount to anything. You had loans outstanding? A Yes, sir.

Q Cash in bank? A Yes, sir.

Q And you had stocks invested? A In bonds.

Q In stocks and bonds, is that right? A Yes, sir.

Q Now, do you know how much you had out on small loans on September 30th, approximately? A Oh, I should say approximately—I am just giving an estimate—I should say approximately in the neighborhood of $50,000; I am not sure.

Mr. Conlon: May I use this blackboard?

The Court: Is there any objection to the blackboard for mathematical purposes?

Mr. Vickers: Yes, how are we going to preserve this arithmetical transaction in the record?

The Court: I do not know, unless it is written into the record.

Mr. Vickers: That does not read the blackboard into the record.

The Court: No.

Mr. Conlon: I am going to offer the blackboard in evidence.

Mr. Vickers: You are going to offer the arithmetical process in the record.

The Court: If it is objected to it is properly objectionable on that ground.

Mr. Conlon: I want to have this witness make some computations and they are not going to be intelligent unless he does it that way.

The Court: They can go into the record, but counsel raises the question that the blackboard cannot go in, and as long as they object to the written record I think he is limited to what is stated, so it will be in the record intelligently.

The Court: I appreciate the difficulty of visualization in remembering what these figures are, Mr. Conlon, but I do not think I can alter the rules of evidence in that respect by reason of the State's difficulty. If the other side objects I shall have to sustain the objection.

Mr. Conlon: May I ask this? Will you hear me on that in reference to a future witness?

The Court: Yes.

By Mr. Conlon.

Q Then answer these questions as near as you can. The money you had invested on September 30th in small loans you say was in the neighborhood of $50,000. As a matter of fact it was in the neighborhood of $80,000? A I think so. I am entirely unable to tell you anything about these figures as to the gross.

Q I think you are nearer right than I am. There was sufficient money from this business to pay the dividend. We have got that much, as to this, in June. A Not June, no. As of September I am of opinion that there was not, but I don't know.

Q Now, in September you had invested in stocks and bonds about $140,000 or $150,000, is this correct? A I will have to refer you—I can't say that.

Q Don't you know anything about this thing? A Why, certainly I do.

Q Have you no idea of that figure? A I can't say that I knew that we had that much in stocks and bonds, no. I simply can't say it; I don't know.

Q Have you got any figures available of your own that you can produce, any memorandum? A I have not.

Q Did you anticipate being asked any of these things? A I didn't know what I was going to be asked.

Q You knew you were going to be asked about the affairs of this company, didn't you? A Yes.

Q You didn't trouble yourself to familiarize yourself with any of these figures? A As I say, I am not the treasurer of the company.

Q You were the president of the company, weren't you? A Yes, indeed.

Q So you can't answer that? A No, I can't.

(A brief recess is taken.)

Q Mr. Hollenbaugh, when you voted for the declaration of these several dividends, and when you took the part that you did in the dissemination of the radio talks and advertising in refer-

ence to them, did you have any more knowledge of the financial status of the company than you have now? A I knew what the report of the treasurer had been as to the net results of a certain period of operation.

Q Had you seen any of Haskins & Sells' reports? A No.

Q You had not? A No.

Q They had been turned into the office, hadn't they? A Well, Haskins & Sells' report on the books was never presented to the directors for the June dividend till some time late in September.

Q All you knew about it was what you heard from Evans? A Well, the treasurer of the corporation gave his report.

Q All you knew about this was from Evans? A Yes.

Q All you knew about it was what he told you? A What he reported.

Q What he reported? A Yes, sir; that is true.

Q You were president? A Yes.

Q You never bothered yourself to go any further? A That is what a treasurer is for, to report to the other officers.

Q Will you answer my question, please? A No, I did not. I took his word.

Q And you are not now familiar with the financial status of the company for these several periods, are you? A Not in detail, no.

Q And you were not then? A No.

Re-direct examination by Mr. Vickers.

Q Do you know whether or not now the corporation is paying twelve per cent dividends?

Mr. Conlon: I object.

(Counsel argue.)

Objection sustained.

Defendants' counsel prays an exception to this ruling of the Court.

Exception allowed; let it be signed; and it is signed and sealed accordingly.

DANIEL J. BRENNAN,
Judge.

Q You made reference in your cross-examination to salesmen coming to Newark. Salesmen of what? What did you mean by that? A Salesmen of the Atlantic Broadcasting Company.

Q Not one of your stock salesmen? A No.

Q Radio time salesmen? A That is it; radio time salesmen.

Q When you received payment for your services as a radio broadcaster, were you compensated for that service in connection with the sale of this stock on the same basis or a higher basis than in your ordinary work as broadcaster? A I would not do the same work for an equal price.

Q I didn't ask you what you would do. I am asking you something about the past. Will you please answer my question? A About the same basis. On about the same basis.

Q As a certain resolution of the minutes of December 5th, I call your attention to this: "Further resolved, That the participating feature of the six per cent preferred stock be increased from four to six per cent, effective as of January 1, 1929." Was that resolution offered and acted on according as it purports to be by these minutes? A Yes, sir.

Dale Davis Hollenbaugh, re-cross.

Q At any time prior to the passage of that resolution was any representation made by you in broadcasting or in any literature that effective as of January 1, 1929, the dividend would be twelve per cent? A Not to my recollection, no, sir.

Re-cross examination by Mr. Conlon.

Q You say your compensation is the same? That was at the rate of how much? A I would say generally the compensation was about the same.

Q How much was that? A I say around $10,000.

The Court: Do you want to ask a question?

The Ninth Juror: I would like to ask a question if I could, your Honor.

The Court: You may.

By the Ninth Juror.

Q Were dividends paid on the common stock of the Universal Finance Corporation during 1928? A No, sir; never paid. The common stockholders—

Mr. Conlon: Just a minute.

The Court: That is the answer.

Mr. Conlon: Unless the juror wants to ask a further question.

The Court: Do you want to ask a further question?

The Ninth Juror: Your Honor, I was going to ask if the amounts that were paid were equal to the participation of the preferred dividend.

The Court: The amounts that were paid what?

The Ninth Juror: That were non-paid.

The Court: You mean the dividend on the common stock?

The Ninth Juror: Yes.

The Court: That question is answered by the answer that there were no dividends paid on the common stock.

RUSSELL SAGE ROAT, sworn in behalf of the defendants:

Direct examination by Mr. Hobart.

Q Where do you live, Mr. Roat? A Newark.

Q What is your occupation? A Salesman.

Q Did you at one time act as a salesman for the Financial Investment Corporation? A I did.

Q When did you work for that corporation? A Oh, from about June, June until December.

Q 1928? A 1928.

Q Did you have anything to do with selling some of this stock of the Universal Finance Corporation to Mr. Abner J. Levy, a witness who testified here a few days ago? A I did.

Q Where did you first see Mr. Levy? A At his home.

Q Where was that? A In New York, in the Bronx.

Q What representations or statements did you make to him about the stock when you went to call at his home? A Well, just the same as on the literature, it was a six per cent. preferred stock, participating stock. It came under

the supervision of the Banking Department and Insurance Department of the State.

Q In Mr. Levy's testimony he referred to what he calls a list signed by some bank president which he said you showed to him. Did you show him any? A I had no list.

Q I call your attention to a paper marked D. 22 for identification and I ask you if you can recall if that was the letter which you had with you at that time? A Yes, sir.

Mr. Hobart: I offer this letter in evidence.

Mr. Conlon: I object to it.

The Court: Sustain the objection.

Mr. Hobart: Am I not entitled to offer this in evidence?

The Court: He does not claim he showed him any letter which contained a statement that was false in fact, if he did it might be admissable.

Mr. Vickers: It was brought out on the State's case.

The Court: That he showed him a letter?

Mr. Vickers: Yes. It negatives the question of a misrepresentation.

The Court: There was no suggestion of misrepresentation in reference to any letter or its contents that I recall. It was the way he introduced himself in the beginning as I understand, by a letter.

Sustain the objection.

Mr. Hobart: Exception.

Defendants' counsel prays an exception to this ruling of the Court.

Exception allowed; let it be signed; and it is signed and sealed accordingly.

DANIEL J. BRENNAN,
Judge.

By Mr. Hobart.

Q Did you see Mr. Levy at any time after that? A Why, yes, I saw him once again.

Q How long after? A Possibly two weeks.

Q What was the occasion of your seeing him the second time? A He had called up the office and asked for his money back and then a partner went up to see him.

Q Did you ever say to Mr. Levy if he was not satisfied he could get his money back without any trouble? A I did not.

Q What, if anything, did you say to Mr. Levy as to the Department of Banking & Insurance of the State of New Jersey? A I didn't say anything about it, only that this company came under the supervision of the Banking & Insurance Department.

(Cross examination waived.)

CHARLES PERRY, one of the defendants, sworn.

Direct examination by Mr. Hobart.

Q Where do you live? A Brooklyn, New York.

Q What is your occupation? A At present I am secretary of the Financial Investment Corporation.

Q How long have you been such secretary? A Since about the 25th day of June, 1928.

Q Are you one of the incorporators of that company? A No, I was not.

Q You joined the corporation some time after its incorporation? A I joined the organization, that is the Financial Investment Corporation, on June 25th, I believe.

Mr. Hobart: I offer in evidence a certified copy of the certificate of incorporation of the Financial Investment Corporation.

Mr. Conlon: No objection.

(Same is marked D. 26.)

Q Calling your attention to the date of the incorporation of the Financial Investment Corporation, which is June 8, 1928, were you associated with Mr. Alexander G. Edwards? A I was.

Q When did you first become associated with him? A In April of 1928.

Q In April of 1928 what line of work were you engaged in any association with Mr. Edwards? A I started with Mr. Edwards in April, 1928, working for a few days as a salesman of stock of the Public Service Finance Corporation.

Q That is the company whose name was afterwards changed? A Afterwards changed to Universal Finance Corporation.

Q What, if anything, did you have to do with the sale of stock of the Public Service Finance Corporation? A Just took a few leads and made a few calls, I think for a period of about two or three days.

Q By leads, you mean possible purchasers of stock? A Yes; prospects.

Q Did you sell any of the stock? A Yes.

Q What representations would you make to those purchasers? A That it was a six per cent. preferred stock, participating to six per cent. of any further dividends declared.

Q Did some of them purchase the stock? A Yes.

Q Did you say anything about the nature of the business? A Yes, I said it was a small loan business under supervision of the Banking Department, Insurance Department of the State of New Jersey.

Q Now, for how long a time did you continue with Mr. Edwards before the organization of the Financial Investment Company in June? A Oh, up until that date I was continually working for Mr. Edwards, but working on a different corporation.

Q After the 8th of June, which is the date of incorporation of the Financial Investment Corporation, up to the 25th of June, what would you do, if anything, with regard to any of these stocks? A I was director of sales of the Plaza Loan Society of Journal Square in Jersey City, New Jersey, under direction of Mr. Edwards.

Q That is an entirely separate company; nothing to do with either of these companies? A The sales were under contract to Mr. Edwards.

Q I say, it is an entirely different company? A Yes.

Q Then you became the secretary of the Financial Investment Corporation on the 25th of June? A On or about that date. I think that is the right date.

Q And from that time on to the present have you been continuously secretary? A I am up to and including this time.

Q What was your particular work for the company? What line of work did you follow? A Directing the activities of salesmen.

Q How many salesmen were in the employ of the company? A Probably twenty-five or thirty.

Q Did you have anything to do with the broadcasting or preparing the broadcasts and supervising them? A I did not.

Q Did you have anything to do with the circulars or literature that was distributed from time to time? A Only such as being brought to my attention. That is all.

Q Well, was it any part of your work to prepare such literature? A No, sir.

Q Did you personally ever make any representation to any of the purchasers of or subscribers for the stock of either the Public Service Finance or Universal Investment Corporation which you know to be false? A I did not.

Q Did you ever authorize any of the salesmen? A No.

Q I mean the salesmen, so far as they came under your direction? A No, I did not.

Q Did you ever conspire with Alexander G. Edwards or Dale D. Hollenbaugh or Dewi T. Evans or Walter F. Cawthorne in manner and form as alleged in this indictment, namely, to cheat divers persons, and so forth?

Objected to.

Objection sustained.

Mr. Hobart: Haven't I the right to ask that?

The Court: Not to ask what is tantamount to a legal conclusion.

Mr. Hobart: I supposed that a conspiracy was a matter of fact depending upon the mental attitude perhaps of the parties who are charged with conspiring. I know conspiracy is a legal conclusion from facts. Conspiracy is also a fact.

The Court: What was or was not done I think is the pertinent inquiry, but whether or not he committed the act complained—

Mr. Hobart: Your Honor overrules that objection?

The Court: I sustain the objection to the question.

Defendants' counsel prays an exception to this ruling of the Court.

Exception allowed; let it be signed; and it is signed and sealed accordingly.

DANIEL J. BRENNAN,
Judge.

Q Did you ever agree with these defendants or any of them to make public sales by means of false pretenses of the preferred stock of the Public Service Finance Corporation, later known as the Universal Investment Company, at a price which was fictitious and above the actual and market value thereof? A No.

Q I would like to direct your attention to the testimony of a witness by the name of Henry Harmeyer of Mamaroneck, New York. Do you remember him? A I do.

Q Did you see him in connection with the sale of any stock? A I did not.

Q Did he call up your office to see you about the sale or purchase of any stock? A He telephoned the office and spoke to me.

Charles Perry, cross.

Q Do you remember the substance of the telephone conversation? A It was merely an order for an additional twenty-five shares.

Q When you talked with him were there any representations or statements made by you as to the stock or dividends on it, or anything further? A It wasn't necessary. Mr. Harmeyer had bought twice before, had subscribed three times, paying in full each time he subscribed to stock.

Q The only time he talked with you was when you say when he called you up and asked for certain additional shares, is that it? A That's right.

Q Do you remember how many he asked for? A Twenty-five shares.

Q Were they issued to him? A Yes, sir.

Cross examination by Mr. Conlon.

Q Who sold Harmeyer? A Harmeyer was sold three times.

Q Who sold him, if you know? A I know.

Q Who? A Mr. Ehrstrom, Mr. Pidge, and I am credited with the last sale.

Q The sale you made was over the telephone? A Yes, sir.

Q Now, Mr. Perry, you said that you never made a representation in reference to this stock that you knew was false. Is that correct? A That is correct.

Q Where did you get the information upon which you made such representations as you did make? A In what respect as to what representation? Generally?

Q Generally. A Well, I think—there are so many there.

Q I will be more specific. You were the sales manager, as I understood it? A Yes, sir.

Q You were given orders as to the instruction of your salesmen? A Yes, sir.

Q You were given those orders by whom? A Mr. Edwards.

Q Did Mr. Hollenbaugh consult you about them at all? A Mr. Hollenbaugh came in once in a while, yes.

Q Mr. Evans? A Mr. Evans, rarely.

Q As I understand it, you got information from them? A I did.

Q Which you passed along to the salesmen? A That is true.

Q Did you at any time check up what they told you, to verify it? A Well, if you will just specify which ones, Mr. Conlon, I will answer it then.

Q Now, taking this one, that the stock was six per cent. participating, preferred stock, which means by six per cent. that six per cent. is set aside from the dividends, one and a half per cent. net profits were distributed to the holders of this stock. Where did you get that information? A From the prospectus.

Q There was no prospectus when you started to sell, was there? A When?

Q In the beginning? A Yes, there was a leaflet, yes.

Q Who got that up? A I don't know.

Q You knew that the representation was made to this effect, "That broadcasting security offerings over the radio was permitted only after a very thorough investigation"? A No, I didn't know that at the time. I just wandered in there and I worked from two to three days.

Q When did you first learn that that representation was being made? A In our office at 605 Broad street.

Q You knew that information was being sent out? A Yes, sir.

Q Where did you get that information? A Over the radio.

Q I mean the representation that was made to the public to the effect that broadcasting security offerings over the radio was permitted only after a very thorough investigation? A I knew that representation—

Q You knew that representation was being made to the public? A I did.

Q Where did you get that information to that effect?

Mr. Vickers: That it was being made?

The Court: As to the fact that it was being broadcast or the fact that it was supervised.

Mr. Conlon: Whether or not that representation was true.

Mr. Vickers: One moment. This witness is not called on to say whether or not it was true. He did not make it.

Q Did you know that representation was being made to the public? A I did.

Q You did? A Yes, sir.

Q Did you know whether or not that was true? A I know that after midsummer or early fall Mr. Clark of station WABC, Mr. Collis of the Better Business Bureau, Mr. Hollenbaugh and Mr. Cawthorne had an interview in New York.

Q And Mr. Evans? A I don't think Mr. Evans was there. I am not sure. I am quite sure he was not, and I think they discussed that fully and were permitted to broadcast.

Q It was upon that you went along with that proposition? A I thought that broadcasting would give evidence of good faith.

Q You yourself had no personal knowledge of what transpired in that conference between those gentlemen You were not present? A I was not.

Q You were told what happened? A Yes, sir.

Q You accepted what you were told? A I know one thing which I did more than accept, by taking one clause out of each subscription contract.

Q Do you know that it was being represented to the public as false this statement, "Now paying a dividend of ten per cent. per annum which is to be increased to 12 per cent. on January 1, 1929?" A I did.

Q "All out of the earnings and still adding to the surplus account." Did you know that that was being disseminated among the prospects? A In what form?

Q In the form of pamphlets? A Will you show me the pamphlet, if you please?

Q Here is one (indicating.) A Yes, I know that one.

Mr. Vickers: May it appear on the record that that is not a pamphlet?

Mr. Conlon: It is a circular letter. I haven't the one which was offered in evidence.

Mr. Vickers: I do not object to your use of that, but I want it to appear that that is not a pamphlet.

The Court: Showing the witness a letter?

Mr. Hobart: Without date.

Q You knew that went out? A Yes, sir.

Q Do you know of your own knowledge that that was a fact? A No.

Q Whose word did you take for that? A Mr. Edwards and Mr. Hollenbaugh.

Q Anybody else? A That is about all.

Q Did you know that in this same letter and otherwise there was being disseminated the representation that the increase in dividend rate will naturally cause a sharp increase in the price of these shares? A Yes.

Q You got that from whom? A I don't have to get that from anyone. I do know when the dividend rate is increased naturally it will cause the increase in price in the value of the stock.

Q What I am trying to get at is this. I want to know whether you personally were responsible for any of this advertising or broadcasting? A Broadcasting, no. Advertising, we had a copy man prepare our copy.

Q And he got the information from whom? A From anyone of us. We would all be equally responsible for that.

Q But it all emanated from what source? Where did the information originate? A As to any particular item?

Q As to any of the items. Did you originate any of it yourself? A No.

Charles Perry, re-direct.

Q That is what I am trying to get at. You did not originate any of these representations yourself? A No.

Q They were originated by whom? A Representations such as that had been carried right along.

Q And they were originated by whom? A I don't know.

Q Were any of them originated by Edwards? A Yes.

Q And some of them by Hollenbaugh? A Yes.

Q Some of them by Evans? A Yes, and probably some by me.

Q Do you remember now what one or ones were originated by you? A No, I do not.

Q Do you remember that any of these that I mentioned were? A No.

Q Who told you that the stock was paying ten per cent. dividend per annum out of the earnings of the company and adding to its surplus? A Edwards.

Re-direct examination by Mr. Hobart.

Q You referred to some paragraph in your subscription contract which was taken out. Who took it out? A Taken out by Edwards.

Q With your consent? A Yes.

Q Do you know what the paragraph was? A I do.

The Court: It is in the record, isn't it?

Mr. Hobart: I think it is, but I want to see if the witness will identify it.

Q I show you Exhibit D. 2. Is that the paragraph beginning, "No statements or representa-

tions," and so forth? A Yes, "No statements or representations."

Q At whose suggestion or request was that taken out? Do you know? A Mr. Collis of the Better Business Bureau of New York.

Q There were new contracts prepared with that omission? A Oh, yes, immediately.

Q Did he object to anything else, other than that one paragraph? A No.

Mr. Conlon (After discussion out of hearing of the jury): If your Honor please, you have just heard the testimony of the defendant Charles Perry. I am frank to say that I have no method of contradicting anything that he said. I must assume therefore that his testimony is true and that he personally wasn't responsible for anything that was done by him excepting at most that he might have been careless in passing along things that were instructed him. But I do not think that is sufficient to hold him under this indictment, and I therefore move that as to the defendant Charles Perry the indictment—I move for a nolle pros as to that.

Mr. Vickers: I think if the Court will permit that that ought to be a direction of verdict of not guilty by direction of the Court, in view of the fact that his defense is in. I think he is entitled to that. There is some difference between a nolle pros and a direction.

The Court: The practical result is the same.

Mr. Hobart: This man has a business reputation behind him and it makes some difference.

The Court (After discussion out of hearing of the jury): The State offers in lieu of the nolle pros a motion to direct at the proper time as to this defendant.

Mr. Conlon: Yes.

The Court: The motion is granted and the jury will be so instructed at the proper time.

(The Court takes a recess until tomorrow morning, Tuesday, June 4, 1929, at 10:30 o'clock a. m.)

ESSEX COUNTY COURT OF QUARTER SESSIONS.

Tuesday, June 4, 1929.

SIXTH DAY.

Continued pursuant to adjournment.

Present, counsel as before stated.

HOMER G. ANGLE, sworn on behalf of the defendants.

Direct examination by Mr. Hobart.

Q Where do you live? A 120 Bremond street, Belleville, New Jersey.

Q What is your occupation? A Salesman.

Q Did you at one time act as a salesman for the Financial Investment Corporation? A Yes, sir.

Q When were you employed by that corporation? A Around the 1st of October, I don't know the exact date.

Q Did you from time to time makes sales of stock of the Universal Finance Corporation? A Yes, sir.

Q I would like to call your attention now to a contract which has been signed by one MacDonald and heretofore marked D. 5 for identification. Do you recognize that as a contract which was signed by the MacDonalds? A Yes, sir.

Q Apparently signed by Anna MacDonald and William MacDonald? A Yes, sir.

Q That is your signature on the contract? A Yes, sir.

Mr. Hobart: I offer in evidence D. 5 for identification, a contract.

Mr. Conlon: No objection.

The Court: It may be so marked.

(D. 5 for identification is marked in evidence D. 5.)

Q The date on this contract which is offered in evidence is December 3, 1928. Is that in accord with your recollection of the time when it was signed? A Yes, sir.

Q Where was that contract signed? A In his home.

Q How did you come to go there? A I had a lead from the office.

Q Explain what you mean by that? A Well, a return card from the advertising to send him any information we had.

Q How long were you with Mrs. MacDonald or Mr. MacDonald—were they both there? A Both there.

Q How long a time did you spend with them discussing the matter? A When I went in and announced where I was from they had their check already drawn from the savings bank waiting for me.

Q Do you remember the amount of it? A $500.

Q Did they have any discussion with you about the matter before they turned the check over to you? A They had intention of buying just $500 worth.

Q Was there any discussion between you and them as to the dividends that were to be paid on the stock? A Yes, sir.

Q State the substance of that discussion as to the amount of the dividends and upon what

amount it was to be paid. A I told them that it was a six per cent. cumulative preferred stock with a participating feature of the net earnings of the company, up to fifty per cent. of the net earnings of the company.

Q Was there any explanation or discussion about the par value of the stock? A $10 par value.

Q Who told them that? A They asked me.

Q Was there any explanation about as to what amount the dividends were to be payable on? A I read the contract to them and I told them that the dividends were based on the par value.

Q Did you also negotiate a contract with one Frank Hurley? A That is a brother-in-law of MacDonald.

Q I show you a paper marked D. 6 for identification. Is your signature on that as the salesman? A Yes, sir.

Q Does that call to your mind whether you negotiated that contract? A Yes, sir.

Q Signed by Mr. Hurley in your presence? A Yes, sir.

Mr. Hobart: I offer this contract in evidence which has been marked Exhibit D. 6 for identification.

Mr. Conlon: No objection to it.

The Court: It may be so marked.

(D. 6 for identification is marked in evidence Exhibit D. 6.)

Q How did you come to go to see Mr. Hurley? A Mr. MacDonald said he would like to introduce me to his brother-in-law and he went with me in my car to his brother-in-law's home.

Q Is that the same occasion when you were there at Mr. MacDonald's house? A No, he asked me to call the following day and he went with me to his brother-in-law's home and we got there as the radio program was on.

Q You mean the radio program of the Universal Finance Corporation? A The Financial Investment Company and Mr. Hurley had the program on at the time.

Q Did you have any discussion with him as to the par value? A Yes, I discussed the par value of the stock with him and all the members of his family.

Q Did you give any explanation to them as to what amount the dividend was to be payable on? A I specifically explained that it would earn a little better than six per cent. but as the stock went along with the six per cent. participating feaure, that it should earn more.

Q Was anything said to the effect that he would get a dividend either of six per cent. or ten per cent. or any other percentage on the amount that he invested as distinguished from the par value? A No, sir.

Q I now call your attention to this subscription contract with Mr. Martin H. Gleason that has been marked D. 8 for identification, the original and the duplicate. Do you recognize your signature on that? A Yes, sir.

Q Was that contract procured by you? A Yes, sir.

Q On or about the date, December 1, 1928? A Yes, sir.

Q Where did you see Mr. Gleason? A In his home.

Q Did he sign the contract in your presence? A Yes, sir.

New Jersey State Library

Mr. Hobart: I offer Exhibit D. 8 for identification in evidence.

Mr. Conlon: No objection.

(The same is received in evidence and marked Exhibit D. 8.)

Q How did you come to see Mr. Gleason? A I called on him the same as Mr. MacDonald was. It was a lead from the office, as we call them, in answer to one of his cards or letters.

Q Did you have any talk with him about the par value and the dividends? A Yes, sir.

Q What did you tell him about the par value? A I told him the par value was $10.

Q What did you tell him about the dividends? A I told him it was six per cent. cumulative preferred stock, participating up to fifty per cent. of the net earnings of the company.

Q Was there any discussion with him as to the nature of the business in which the company was engaged at that time? A I explained to him in New Jersey it was known as the industrial loan business and in New York as the industrial banking business.

Q How long were you with him? A Probably forty minutes.

Q Was there anything said about its being a banking business in New Jersey? A No, sir.

Q Was there anything said about its being under the supervision of any New Jersey Department? A Yes, sir.

Q What was that? A I told him it was under the supervision of the State Banking & Insurance.

Q Did you have any discussion with him as to the rate of dividends that were to be paid? A Six per cent plus the participating feature.

Q Was there anything said by you to him to the effect that he would get twelve per cent. on the money invested as distinguished from the par? A No, not on the money invested, but I mentioned after the first year that the notices went out that it would be twelve per cent. paid on par value.

Q On the par value? A On the par value; yes, sir.

Q Was there any discussion between him and you as to the security of this investment, of the safety of it? A Yes, sir.

Q State the substance of that. A Well, I told him that it was considered a safe investment in New Jersey where I came from that they received three per cent. a month on their loans, that it being under the supervision of the Banking, as I understood and have always understood since I have known the—

Q How long were you with him? A Oh, about forty minutes, I guess.

Q Now, calling your attention to a Miss Squiterri—do you remember her? A Mr. and Mrs. Squiterri, both together.

Q Did you sell some stock to them? A Yes, sir.

Q Do you remember where you saw them? A In their home.

Q What discussion did you have with them about dividends? A I told them that it was based on par value, and they wanted to know how much it would be, so I sat down and figured it out around six, well, it is a little over a six and a fraction per cent., because they said, "Well, that is two per cent. better than we get in the bank."

Q Did you—did they refer to one bank they had their money in at that time? A I think it was the Brooklyn Savings Bank. I am not sure.

Q How long were you with them? A Oh, probably an hour.

Q Was there anything said about its being a small loan business? A Yes, sir.

Q What was said about that? A I told them it was known and recognized as the small industrial loan business in New Jersey, loaning up to $300 to individuals on collateral loans—I mean collateral mortgages, I believe you call them.

Q Was there anything said about a change in the rate of the dividend? A I think so; yes, sir.

Q Do you remember what was said about that? A After January 1st that the dividend rate would be six per cent and the participating feature would be six on par value.

Q Making a total of twelve-? A Yes, it would be twelve after the first of the year; yes, sir.

Cross examination by Mr. Conlon.

Q In each of these sales Mr. Hobart has asked you about, you told the prospects that after the first of the year the price of the stock would be raised to $16 and the dividend raised to the rate of 12 per cent, is that correct? A Not in all of them; no, sir.

Q On which ones? A Why, Mr. Squiterri and Mr. Gleason is all. I think I told them after the notice had come out.

Q Mr. Gleason, and who is the other one? A Squiterri is the way I pronounce it. I think it is here.

Mr. Conlon: Did you give me all that you questioned the witness about?

Mr. Hobart: Yes. I have not got the Squiterri contract. It was not offered.

The Witness: Anyway, that is what I told him about it.

Q You did tell Mr. Gleason, did you? A Mr. Gleason?

Q Yes. A What is the date of his contract?

Q I am not asking you what the date is. I do not see that that has anything to do with it, Mr. Angle. I am asking you if you told Mr. Gleason that the stock, both the price and the dividend of the stock were going to be increased after the first of the year? A Yes, sir.

Q Are you sure of that? A Yes, sir.

Q How did you get that information? A From the literature and from the announcement.

Q What announcement? A Radio announcement.

Q From the radio announcement? A Yes.

Q You mean to say that you men in the office did not get it before it was announced over the radio? A I told you I got it before.

Q How? A From the office.

Q From whom? A From the sales manager.

Q Who? A Mr. Perry.

Q When? A I don't know the date.

Q But it was before you sold Mr. Gleason? A Yes, sir.

Q And you sold Mr. Gleason on the 1st of December; is that correct? A Yes, sir.

Q Do you know when the resolution was passed increasing the dividend? A No, sir.

Q You don't know? A No, sir.

Q You don't know that that was not passed until the 5th of December? A No, sir.

Q Do I understand that in all these cases where you sold this stock you sat down and explained to these people that they were not to get six and two-thirds per cent on their money? A In all cases where I was asked.

Q In all cases where you were asked? A And those cases were particularly where I was asked.

Q In cases where you were not asked did you do it? A I told them it was ten per cent on the par value and six per cent cumulative preferred stock with a participating feature.

Q In cases where you were not asked did you explain to the people? A I read the contract.

Q Will you listen to the question? In those cases in which you were not specifically asked to do so did you explain to your prospects that under this plan of investment their money was earning about six and two-thirds per cent and not ten per cent? A Not in all cases; no, sir.

Q Did you in cases where you were not specifically asked to do it tell them? A Yes, I read the contract in all cases, but I didn't figure it out in all cases.

Q I didn't ask you that. Will you please answer the question? Did you in any case where you were not specifically asked so to do explain to your prospects that the income on their investment in this company would net them six and two-thirds per cent on their money and not ten per cent? A I would read the contract.

The Court: Strike that out.

Homer G. Angle, cross.

By the Court.

Q The question is whether or not in any case where they did not ask you specifically you told any of these people that they would get six and two-thirds per cent and not ten per cent on the par value. A No, sir.

Q. That was very simple. A No, I did not.

By Mr. Conlon.

Q Did you tell your prospects that the business of the Universal Finance Corporation was a small loan business? A Yes, in New Jersey.

Q Did you tell them that your business was very prosperous? A Yes, as far as I knew, I told them.

Q Would you say when you went to a prospect, "As far as I know this company is very prosperous"? A No.

Q What would you say? A I told them that this company was prosperous.

Q You explained to them that they could legally charge in this State 36 per cent per annum interest on small loans? A Yes, sir.

Q And by reason of that fact their earnings were substantial and increasing all the time and that the prospects of big dividends were very great. Did you tell them that? A Yes, sir.

Q Did you at any time mention the fact that the Universal Finance Corporation was buying and selling stock in the stock market? A I didn't know that.

Q I asked you whether you told them that. A No, sir.

Q Did you tell them that the dividends were being paid out of the earnings of the small loan business? A Yes, sir.

Q You did tell them that? A Yes, sir.

Q Did you, as a matter of fact, know whether or not that was true? A I was instructed that way.

Q By whom? A By officers of the company.

Q By Mr. Edwards? A No.

Q By whom? A Mr. Perry or Mr. Cawthorne.

Q You knew nothing about it except what they told you? A Only from the literature.

Q From the literature and what they told you? A Yes, sir.

Q You never examined the books? A No, sir.

Q You never saw a financial statement? A No, sir.

Q But you did tell them that these dividends were being paid out of the earnings and that all the money was being earned out of the small loan business? A Yes, sir.

Q You say Edwards did not tell you that? A I don't just quite remember that, Mr. Conlon, whether he did, but I know that the other two officers did.

Q Do you remember making a statement downstairs in the Prosecutor's office on December 27 last? A Yes, sir.

Q Do you remember on that occasion with reference to that subject being asked this question was propounded, "Who was it told you that?"

The Court: Read the entire line of questions.

Mr. Vickers: I object to this question, containing the context counsel says is the subject.

"Q You say this company paid dividends? A Ever since I have been with them.

"Q And they were earning it? A That is what I was told.

"Q Who told you that? A It was on the literature and they said that it was earning these dividends. In fact I would not have sold the stock if this company was not paying dividends out of the earnings.

"Q Who was it told you that? A Mr. Cawthorne, I am quite sure.

"Q Mr. Cawthorne told you that? A Yes, sir.

"Q Mr. Cawthorne? A Mr. Cawthorne or Edwards, one of them."

Did you say that? A If I put it that way and you have it there, I said it.

"Q Both told you that the company was paying dividends out of earnings? A Yes."

Did you say that? A Yes, sir.

Q Is your recollection any better after hearing that statement that you made in December, as to whether or not Edwards told you this? A Yes, I remember it now.

Q Edwards did tell you that? A Yes, sir.

PHILIP FREYLAND, sworn in behalf of the defendants.

Direct examination by Mr. Hobart.

Q Where do you live? A No. 1 Raleigh place, Brooklyn.

Q Were you at one time in the employ of the Financial Investment Corporation as a salesman? A Yes, sir.

Q I would like to show you two contracts referred to before in this case, one dated October 15, 1928, and the other December 12, 1928, Helen Pearsall. Did you make the sales represented by those contracts? A Yes, sir.

Q How did you come to call on the subscriber? A I received the call through the office.

Q Do you recognize your signature on both of these? A Yes, sir.

Mr. Hobart: I offer in evidence these two contracts, both of which have been marked D. 11 for identification.

Mr. Conlon: No objection.

The Court: They may be so marked.

(Two contracts are marked Exhibit D. 11.)

Q Do you recall the circumstances under which you procured these subscriptions? A I called at Mr. Pearsall's home in the afternoon and I had a chat with him for about an hour and he advised me to come back and see his wife, when she was at home, his wife was working during the day time and I got back and after being in his home an hour and a half, after going through the matter very clearly I got Mrs. Pearsall to take some of these shares.

Q Are you referring now to the first subscription of October 15, 1928? A Yes, sir.

Q Was there any discussion about the dividend rate at that time? A Yes, sir.

Q What was the discussion in substance? A Well, of course these people here had their money in a savings bank, and after having me explain about it, the advisability of having their money invested where it could earn more than four per cent. they saw fit to take some of these shares.

Q What statement did you make to them about the dividend rate? A I told them that the dividends at that time, October 15th, was paying at the rate of six per cent. participating preferred and then paying at the rate of ten per cent. on the par, or four per cent. extra.

Q Making a total of ten per cent? A Making a total of ten per cent. on the par value of $10 a share.

Q Was anything said to you to the effect that the dividend was to be paid on the amount invested as distinguished from the par value of the stock? A No, sir, and these people understood that clearly.

Q Now calling your attention to the second contract of December 12, 1928, do you remember the circumstances under which that was procured? A I happened to pass by their home there, and I thought I would drop in and pay them a visit, and ask them whether they would want to take any additional shares owing to the increase in price which was to take effect from that date on.

Q Did you see Mr. and Mrs. Pearsall? A Yes.

Q You saw both? A Yes.

Q Did you have some further discussion with them? A Well, at that time they were—there was considerable excitement about a lot of these here, several of the small loan companies having got themselves in hot water, and they wanted to know whether this company here was affected, and I says, "Of course not. You don't see the Universal Finance mentioned." And they said, "No," and they thought it was all right, and then they came to the conclusion they wanted five additional shares.

Philip Freyland, cross.

Q What discussion was there at that time about the dividend rate? A That it was going to be increased from ten per cent. to twelve per cent. after the first of January.

Q Was there any discussion at that time about whether the rate was on par?

Objected to.

Objection sustained.

Q What discussion, if any, did you have at that time as to the amount upon which the rate was to be payable? A Well, there was very little business discussed, because these people understood this investment—

Q Never mind that, but what discussion, if any, did you have on that subject on the occasion of the signing of the second contract? A None that I recall.

Cross examination by Mr. Conlon.

Q The second subscription was taken up by you on the 12th of December; is that right? A Yes, sir.

Q Is that the day you say the increase in price and the increase in dividend was announced? A No, sir. It was announced a few days prior to that to take effect after that day, if I remember clearly.

Q How many days prior to this was it announced? A I should say about a week.

Q About a week. That would make it on about the 5th of December? A I believe that would be about right.

Q Did you know about it before it was announced? A Before it was announced?

Q Yes. A No, sir.

Q Did you tell these people that this company was in the small loan business? A Yes, sir.

Q Did you tell them that under the law the small loan company was allowed to charge 36 per cent. a year? A No, sir; that wasn't my understanding. At the rate of three per cent. per month.

Q At the rate of three per cent. a month? A Yes.

Q You did tell them that? A Yes.

Q You told them that by reason of that fact that the company was earning a great deal of money, and it was very successful? A Making money; yes, sir.

Q And it was very successful? A Well, I assumed it was successful; yes, sir.

Q I am not asking you what you assumed. A I don't know whether it was very successful.

Q I am not asking you whether it was very successful. I am asking you what you told the people. A I told them that the company was making money.

Q Did you tell them that it was very successful? A I told them it was successful as far as I know. I don't remember whether I used the word "very" or not.

Q Did you tell them about the status of the company? A Well, I told them that the company here was in a business which is a very profitable business, and it seems that every organization that started in business of this nature dealing in dollars and cents became very profitable and did not see any reason why this organization should not prove to be the same.

Q Did you tell them that it was then making money? A Yes, sir.

Q And that it was paying dividends out of the money it was making? A Yes, sir.

Q And that it was making this money out of the small loan business? A Yes, sir.

Q Did you then as a matter of fact know whether it was making any money out of the small loan business? A That was my understanding, yes.

Q Where did you get that understanding? A From the office.

Q From whom? A Mr. Perry was their sales manager.

Q Anybody else? A All my dealings were with Mr. Perry.

Q And you say that you told them that the corporations of this kind dealing in dollars and cents were almost uniformly successful, is that right? A To my knowledge; yes, sir.

Q You had this literature here with you? A Yes.

Q And you drew the comparison between bank stocks and industrial stocks for these people, didn't you? A Bank stocks?

Q Yes. A Why, I don't know. I know I brought the Morris Plan very frequently, and I used the Modern Loan & Investment very often.

Q And you used the matter that was in the literature, didn't you? A I may have referred to it from time to time.

Q Look at the literature. There is a comparison in the literature headed "Bank Stocks vs. Industrial Stocks." A Well—

Q Just a minute. You see that there, do you? A Yes, I see it.

Q Then there is a comparison as to the earnings and the success of these companies, is that right? A Yes, sir.

Q In other words, it says for instance, "Out of seven hundred oil and mining companies one succeeds"? A Yes.

Q "Out of a hundred industrial companies five succeed. Out of a hundred bond issues ninety-seven succeed; and out of a hundred financial institutions, ninety-nine succeed." A Yes.

Q You told these people in businesses of that kind ninety-nine out of a hundred succeed? A Yes, I believe that—

Q That is right. And you told them that this was a financial institution? A Financial institution; that is right.

Q And you made your comparison of this institution with a bank? A I wouldn't say that; no, sir.

Q What did you do? A I compared it with the Morris Plan and with the Modern Loan & Investment.

Q And you said ninety-nine out of a hundred of them succeed? A To my knowledge it is a big percentage; yes.

Q As a matter of fact, it wasn't your knowledge; it was what you were told by your officials, wasn't it? A And from the literature.

Q From the literature? A Yes.

Q You weren't using your own knowledge. You were using what you were told by your employers? A From my employers and any information I could get from any other source.

Q Did you have any information from any other sources? A I got quite a lot of information pertaining to the Modern Loan & Investment; yes, sir.

Q You did use the word "banking"? A Industrial banking.

Q Industrial banking? A Yes.

Re-direct examination by Mr. Hobart.

Q What is this Modern Loan & Investment Company that you referred to? A That happens to be an organization in business over in Brooklyn that is loaning money from sums of fifty to five thousand dollars.

Re-cross examination by Mr. Conlon.

Q Did you tell any of your people that this corporation was buying and selling stocks in the stock market? A No, sir.

WALTER F. CAWTHORNE, one of the defendants, sworn in his own behalf.

Direct examination by Mr. Hobart.

Q Where do you live, Mr. Cawthorne? A 18 Kearney street, Newark, New Jersey.

Q What is your occupation? A Treasurer of the Financial Investment Company.

Q How long have you been treasurer of that company? A Since June 25th.

Q 1928? A 1928.

Q Were you one of the incorporators or did you join it afterwards? A I joined it afterwards.

Q Before you became the treasurer of that corporation what was your business? A I was associated with Mr. Edwards in the Plaza Loan Society in Jersey City in the same work.

Q Prior to that what was your business? A Banking business.

Q With what bank? A The last bank was the People's Bank in Brooklyn, and before that

it was the Union County Trust Company of Elizabeth.

Q What official positions, if any, did you hold in these banks? A With the People's Bank I was cashier, and with the Union County Trust Company paying teller.

Q Over how long a period of time did that banking experience extend? A Well, I started with the Union County Trust Company when I was twenty years old.

By the Court.

Q How long ago was that? A Well, I was with the Union County Trust Company, oh, I suppose twenty years.

Q Mr. Fowler testified that he knew you in 1899. A 1899 he knew me?

Q Yes, he first knew you. A I think so, yes.

Q Was it as long as that? A When I left Mr. Fowler—I don't remember the date, but when I left Mr. Fowler I went to the old First National Bank of Elizabeth, which was afterwards taken over by the Union County Trust Company, and I was there until 1911.

By Mr. Hobart.

Q Then you became connected with this bank in Brooklyn? A In Brooklyn.

Q How did you happen to become associated with Mr. Edwards in the sale of the Plaza Loan Society stock? A Well, I knew Mr. Edwards had a contract to sell the stock and he called me on the phone one day and asked me to communicate with him in Jersey City, which I did.

Q Had you known him before that time? A Known him a long while. And he asked me to

come in and take charge of that business in handling it, in handling that issue, which I did.

Q That was in Jersey City? A Jersey City.

Q And then you afterwards became the treasurer of the Financial Investment Corporation? A Yes.

Q What, if anything, did you have personally to do with the sales of stock of the Universal Finance Corporation? A Outside of a few sales that I made myself in the office and one or two outside, I had very little to do with the sales.

Q What was your special duty or work at the office of the Financial Investment Corporation? A In charge of the details of the office, receiving all moneys that were received and disbursing them.

Q Now, I would like to call your attention to certain subscription contracts which have heretofore been identified. I take one first, the contract signed by one Joseph F. Armour. Is your name on that contract? A Yes, sir.

Q Do you recall the circumstances under which that contract was signed? A My recollection is that Mr. Armour came to the office to buy the stock.

Q And you saw him? A Yes. According to my marks there have paid—well, it is scratched out—this would indicate he paid something on account.

Q You are not sure? A I am not sure of the amount he paid at that time, and I think he came back in a month and paid the balance.

Q I call your attention to the date, July 20, 1928. Is that correct? A July 20th, yes.

Mr. Hobart: The contract to which I refer has heretofore been marked Exhibit D. 2 for identification, and afterwards D. 2 in evidence.

Q At the time you had Mr. Armour at the office, was there any discussion about the dividends on the stock of the Universal Finance Corporation? A As I recall it I told him the facts, that it was paying ten per cent. dividend, had paid a ten per cent. dividend.

Q Did he make any inquiry about the officers of the company? A I don't recall that he did.

Q How long was he at the office? A Twenty minutes, or a half an hour. I don't recall exactly.

Q Was there anything said as to the amount upon which the dividend rate was to be applied or be payable? A At par.

Q Was there any discussion with him as to what the par of the stock was? A No.

Q Did he inquire about that? A I don't recall that he did particularly.

Q Do you recall whether there was some discussion about that? A In the other cases there was.

Q In this particular case? A Yes. I don't recall that particular case.

Q Calling your attention to subscription contract signed by George R. Tennant, heretofore marked D. 10 for identification. Do you recall that? A Yes, sir.

Q What is the date on it? A December 4th.

Q Signed by you? A Yes, sir.

Q And also signed by Mr. Tennant? A Yes, sir.

Mr. Hobart: I offer this contract in evidence, which exhibit heretofore was marked D. 10 for identification.

Mr. Conlon: No objection.

The Court: It may be so marked.

(D. 10 for identification is received in evidence and marked Exhibit D. 10.)

Q I call your attention to date December 4, 1928. A Yes, sir.

Q Was that the date it was signed, as far as you know? A Yes, sir.

Q State the circumstances under which that was signed? A All I remember, Mr. Tennant came into the office and I think on this one he said that he was in touch with the office, because he said he saw 605 on the door as he was passing, and he said that he had heard it over the radio, and it attracted him and he came in.

Q Did you see him? A Yes, sir.

Q Did you have any discussion with him about the stock? A A general discussion.

Q Was anything said at that time about a probable increase in the price of the stock? A I don't recall particularly his case. I may have said, probably did say that I expected to see an increase in the price and an increase in the dividend.

Q Do you recall if anything was said by you at that time to him as to what the dividend rate was? A No.

Q Was there any discussion as to the nature of the business of the company? A Yes.

Q What was the substance of the discussion? A The small loan business and compared it with the other small loan companies.

Q How long a time was Mr. Tennant at the office before he signed the subscription contract? A I suppose a half an hour.

Q Now, I call your attention to a contract of November 20, 1928, purporting to be signed by one Alexander Reid. Is your signature on that? A Yes, sir.

Q Do you recall the circumstances under which that contract was signed? A I do.

Q Was it signed in your presence? A Yes, sir.

Mr. Hobart: I offer this contract dated November 20, 1928, referred to by the witness, in evidence. It hasn't been marked for identification as yet.

Mr. Conlon: No objection.

The Court: It may be admitted.

(Contract is received in evidence and marked D. 27.)

Q Tell us the circumstances under which this contract was given? A Mr. Reid called at the office one evening when I was there and I answered the phone and he said that he just heard the talk over the air and he wanted to buy some of the stock. I said, "Can you come to the office?" and he said, "No, I am lame. I can't." He said, "Can you come over to my place?" I asked him where he lived and he told me.

Q Do you remember where it was? A In Bayonne. I think on Margaret street. Yes, Margaret street. I asked him to make an appointment or set the time, and I think it was the next afternoon or evening, and I said I would come over and see him. He said, "I have quite some money to invest, if it is all right," and I

drove over the next evening and Mr. and Mrs. Reid were both there and one or two of the children was running around. He said, in a general discussion, "I would like to buy some of that stock," and exhibited or produced a certificate, a $5,000 certificate of the Mechanics Trust Company of Bayonne.

By Mr. Vickers.

Q Keep your voice up, Mr. Cawthorne. A Mrs. Reid produced a $5,000 certificate and said, "We also have some money in the bank." I said, "How many shares do you think you would like to take? How many can you take? Would you like to take 100 shares?" "How much?" I said $1,500. She said, "We have $1,800 in the savings bank." She said, "Can I take more?" and I said, "Why not be satisfied with 100 shares?" I said, "We expect an increase in the price, but before the price goes up I will make it a point to telephone you and if in the meantime you feel that you want to take some more you can buy it at that price." She said, "We have about $15,000 to invest." I said, "That is a lot of money," I said, "Be sure that you are right, and take 100 shares and pay $1,500 for it, and I will call you up before the price goes up and give you a chance to buy it at the $15 price."

Q Did they buy it? A Yes, 100 shares, and they gave me their bank book, and I put it through our bank and they returned the bank book to them.

Q They paid for the first subscription $1,500 in all? A Yes, sir.

Q At the time you talked with them about this first subscription what if anything was said about the dividend rate?

The Court: May I suggest, Mr. Cawthorne, that you add to the difficulty of testifying by keeping your hand up to your face.

The Witness: Pardon me, your Honor.

A I went into detail with them and I told them just exactly what the dividends would amount to and then I figured—I figured it out for them on a piece of note paper which she provided for me, just exactly what the income would be, and I left it with her and I showed her that she would get more than she was getting on the certificates of the savings bank.

Q Was there any discussion about the par value of the stock? A Yes, sir.

Q What did you state as to that? A The par value was $10 and I figured out just how the dividends would be that much.

Q I now call your attention to another subscription contract dated December 11, 1928, purporting to be signed by Alexander Reid. Do you recognize that? A Yes, sir.

Q Your name is on it? A Yes, sir.

Q Was that also signed in your presence by Mr. Reid? A It was.

Mr. Hobart: I offer this contract in evidence.

Mr. Conlon: No objection.

The Court: It may be marked.

(The contract is received and marked in evidence Exhibit D. 28.)

Q The date on this contract D. 28 is December 11, 1928? A Yes, sir.

Q Explain the circumstances under which that contract was signed? A Yes. I called

Mr. Reid on the phone, I think it was either on the 10th or the 11th and I told him that the price was being increased to $16 on the 12th and I asked if he thought any more about buying more of the stock and he said, "Yes, will you come over and see us again?" and I said, "Yes, I will." Before going over there I talked to Mr. Evans and Mr. Perry about what Mrs. Reid had told me, that she had $15,000 to invest, and I told them about the $5,000 certificate which she had produced when I was there before. Now, I told Mr. Reid—I told them that Mr. Reid wants to buy more stock, "shall I take the certificate?" and in that discussion they said, "Why, yes, take it," but Mr. Evans said, "Do not take any more than just the one $5,000 certificate. Do not sell any more than $5,000." $5,010 was the exact amount. So, I saw Mrs. Reid and told her about it. She wanted a mortgage and was rather enthusiastic about wanting to buy a lot and I said that we would take the $5,000 certificate and issue shares to her, which we did.

Q Which was in the number of 334 shares? A 334 shares divided into $5,000, as recall it, she gave me $10 in cash and the $5,000 certificate.

Q There is some writing on the back of Exhibit D. 28, look at that and tell us whose handwriting that is. A Oh, yes, the certificate was turned over to me. The dividend date was some time after the turning over to me, and I made a note here that it is understood that Mrs. Reid would receive the accrued interest to date on the certificate. I think that when this was accepted by the company they sent her a check of the accrued interest up to the time when she turned it over to me.

Q That is your handwriting on there? A Yes, I wrote on that.

Q On the face of it, where I see the statement, "Certificate Mechanics Trust Company, Bayonne," is that the certificate you refer to? A Yes.

Q Was the certificate turned over to you and by you to the Financial Investment Corporation? A Yes, sir.

Q Was anything said on the occasion of this second sale about the dividend rate? A The same as on the first. I figured out for her just what she would get.

Q Was anything said about the possible increase in the dividend rate? A Yes, it was on the basis of the increase that the second contract was taken.

Q What was the increase? A An increase of two per cent. on ten per cent., making twelve per cent.

Q Beginning when? A January 1st.

Q Did you have anything to do with the preparation or distribution of the literature of the company offered in evidence? A In a general way, yes.

Q I refer especially to the circulars and so-called "Treasure Chest" and a letter without date purporting to be signed by you. I am referring to S. 2, S. 1, S. 3, S. 16, S. 13 and S. 4. State what if anything you had to do with the preparation of any of that literature? A The preparation was handled by a man who was a specialist in getting up literature for sales campaigns.

By Mr. Vickers.

Q I will have to ask you again to keep your voice up. A It was prepared by a man whom

we hired to get up the literature and all that stuff in the literature was all read over and perhaps suggestions were made from time to time as things would come up, in the circulars. I do not recall any particular one or any particular part I had a direct connection with putting in.

Q Did you have anything to do with the preparation of the radio talks? A Only perhaps by way of suggestion.

Q Are you able to identify any suggestions that you made in any of the radio talks, or is that impossible at this time? A I don't believe I could.

Q One of these exhibits, this so-called form letter, Exhibit 4, purports to have your signature? A That is not my signature. It is facsimile.

Q Did you have anything to do with the preparation of that? A That was prepared by the same man who prepared the literature.

Q Then I would like to call your attention also to the first page of Exhibit S. 13, being the December number of the Treasure Chest. Does your name appear on that? A Yes, the same way.

Q You mean a facsimile signature? A Facsimile.

Q Did you have anything to do with preparing that? A No.

Mr. Conlon: You are not a poet?

The Witness: I wished them all a Merry Christmas, but I didn't write that.

Q This letter marked Exhibit 4, was that read over by you before it was signed? A Yes, sir.

Q Did you in good faith believe the statements therein to be true? A I did.

Q Mr. Cawthorne, on the 28th day of March, 1928, and thereafter to the 30th day of March, 1929, did you agree with Mr. Alexander G. Edwards, Dale D. Hollenbaugh, Dewi T. Evans, or Charles Perry, or any of them, to make public sales by means of false pretenses of preferred stock of Public Service Finance Corporation, later known as the Universal Finance Corporation, at a price that was fictitious and above the actual and market value?

Mr. Conlon: I object.

The Court: Sustain the objection.

Mr. Conlon: May I make it clear on the record, the ground of the objection, so that there is no question? Anybody who might have joined this conspiracy later, even after the original conspiracy, is equally guilty with the original conspirators.

Mr. Hobart: I grant that, and if that question is permitted I will follow it up whether he did at any time between the dates mentioned.

Mr. Conlon: It calls for a legal conclusion.

Mr. Hobart: No, but he has a right to deny the fact.

The Court: You may submit your questions in order, and if there is an objection the Court will rule.

Mr. Hobart: The present objection is sustained?

The Court: The objection is sustained. Defendants' counsel prays an exception to this ruling of the Court.

Exception allowed; let it be signed; and it is signed and sealed accordingly.

DANIEL J. BRENNAN,
Judge.

Q Did you at any time between March 28, 1928, and March 30, 1929, agree with Alexander G. Edwards, Dale D. Hollenbaugh, Dewi T. Evans, or Charles Perry, or with any or either of them, to make public sale by means of false pretenses of preferred stock of Public Service Finance Corporation or of Universal Finance Corporation at a price that was fictitious and above the actual market value?

Objected to.

Objection sustained.

Defendants' counsel prays an exception to this ruling of the Court.

Exception allowed; let it be signed; and it is signed and sealed accordingly.

DANIEL J. BRENNAN,
Judge.

Q Did you at any time during the dates previously mentioned agree with the persons previously mentioned, or enter into an agreement with the gentlemen previously mentioned, or with any or either of them to defraud any person, known or unknown, by means of false pretenses?

Objected to.

Objection sustained.

Defendants' counsel prays an exception to this ruling of the Court.

Exception allowed; let it be signed; and it is signed and sealed accordingly.

DANIEL J. BRENNAN,
Judge.

Q Did you personally make any false pretenses in regard to the preferred stock of the Public Service Finance Corporation or the Universal Finance Corporation? A No.

Q Did you at any time between the dates mentioned join any of these men, any or all or either of them, in an agreement to sell stock by means of false pretenses, knowing that there was an agreement or undertaking on their part so to do? A No.

Mr. Hobart: Cross examine.

Cross examination by Mr. Conlon.

Q Mr. Cawthorne, you were the treasurer of the Financial Investment Corporation? A Yes, sir.

Q Did you have any connection with the Universal Finance Corporation? A No.

Q Where did you do most of your work? A In our office, 605 Broad street.

Q That is in the Wiss Building? A No, in the Griffith Building.

Q How much did you subscribe to this stock of the Financial Investment Corporation? A Financial Investment Corporation? Nothing.

Q How much with the Universal Finance Corporation? A Nothing.

Q That is, either the common or the preferred? A Nothing.

Q You weren't a common or preferred stockholder in the Universal Finance Corporation? A No.

Q You had charge of the office work? A Yes, sir.

Q Did you have anything to do with the salesmen? A Very little. I met them and never directed them.

Q Now, I call your attention to Exhibit S. 4, you are familiar with that? A Yes.

Q You were familiar with the representations contained in that exhibit? A Yes.

Q And you were familiar with the fact that those representations were disseminated among the public? A Yes.

Q You said that you never made a representation which was false? A Yes.

Q You mean by that that you never made a representation which was false, to your knowledge? A Yes.

Q That is what you mean, is it? A Yes.

Q You don't mean by that to state now that you then knew that all these representations were as a matter of fact true? A What is that question?

Q I don't blame you if you don't understand it. I will withdraw it and reframe it. You don't mean to say that you knew when these representations were made that as a matter of fact they were actually true? A Yes.

Q Did you know anything about the earnings of the Universal Finance Corporation? A Yes.

Q How did you know it? A Through the officers of the company.

Q Did you examine the books? A No, sir.

Q Did you ever see a statement? A No.

Q Did you ever see a report from Haskins & Sells? A I saw one in September, I think it was.

Q Do you remember what that contained? A I don't recall.

Q Well, when you say that you knew they were true, you mean that you knew it from what you were told by the other officers? A Yes.

Q Did you have any personal knowledge yourself except what you heard from the other officers? A No.

Q Now, as to the representations and broadcasting security offerings over the radio is permitted only after a very thorough investigation, where did you get what information you had about that? A Why, while with the Plaza I knew that the authorities—officers of the station WABC had written to the bank at Jersey City, had written to people about the Plaza, and I knew about a letter that was sent out by the bank in Jersey City.

Q Did you know anything about the letter that was written from Evans to Hollenbaugh? A I knew about it, but I never saw it.

Q Did you know anything about the circumstances under which it was written? A It is my impression—

Q No, I don't want your impression. A I can't answer yes or no. I mean I knew the letter was written, but I don't know what the details were. In other words, I knew that Mr. Evans had written up the broadcasting.

Q You don't know under what circumstances he wrote that letter? A No.

Q Did you know the extent to which the business was under the supervision of the Department of Banking & Insurance? A Yes.

Q Did you know what supervision the department exercised over the Universal Finance Corporation? A Yes.

Q How often were you in the Universal Finance Corporation offices? A Very seldom.

Q How often? A Oh, once a month, I might say.

Q During that period you didn't know whether or not the department was making examinations there in your absence from the Universal Finance Corporation office, did you? A Not about that company, but as to other companies I knew they did.

Q I am talking about your office. A That is where I got the information.

Q Where did you get the information to the effect that the company was paying dividends out of the earnings and adding to surplus? A The reports from the officers.

Q By the officers, you mean whom? A Mr. Hollenbaugh, Mr. Evans, and I think Mr. Fitzmaurice, if I remember rightly.

Q Mr. Edwards? A Edwards may have said it. I don't remember any particular thing. He was an officer of the company.

Q You say Mr. Fitzmaurice? A Yes.

Q Did Mr. Fitzmaurice ever tell you that the company was making money out of earnings or paying dividends out of earnings? A I recall one conversation in our office. Mr. Fitzmaurice probably would come in there two or three times at the most, if I remember, and I was speaking about the campaign, and the question about the dividends, that the dividends were being earned, and he said yes.

Q You don't know what his source of information was? A No, I don't. Simply as an officer.

Q Now, there is a representation that all detail work was in the hands of Haskins & Sells, one of the leading firms of accountants. Did you know to what extent Haskins & Sells had control of the financial end of the Universal Finance Corporation business aside from what you were told? A No, I didn't know they had any control. I knew they were running the books.

Q Did you have anything to do with the declaration of dividends? A No.

Q Were you consulted about it? A No, sir.

Q What I am getting at is this, such part as you had in the discussion of these representations to the public, the knowledge that prompted you to figure your part in these transactions was derived from Evans, Edwards and Hollenbaugh? A Yes, sir.

Q You took their word for it? A Absolutely.

Q You had no right, as a matter of fact, to examine the books of the Universal Finance Corporation, did you? A No.

Q You were never asked to examine them? A No.

Q You were never asked to examine a financial statement? A No.

Q You were never consulted as to what dividends should be paid? A No.

Q You were never consulted as to what representations should be made to the public? A No.

Re-direct examination by Mr. Hobart.

Q As far as salesmen were concerned, who had charge of them? A Mr. Perry.

Mr. Hobart: May I ask a question I omitted, which I have been reminded of?

The Court: Yes.

Q Referring to the discussion you had with these several persons who signed subscription contracts in your presence, was there any discussion in regard to the investment of the Universal Finance Corporation? A Yes, sir.

Q What was the substance of that part of the discussion? A Why, in every case where I told a person I told them about the small loan business, comparing it with other companies, and I also told them of the list of securities which the company held, which I felt proud to talk about; of the class of securities.

Q How did you get your information about the securities the company held? A From Mr. Evans and Mr. Hollenbaugh.

Re-cross examination by Mr. Conlon.

Q You did tell the prospects that the company was making this money out of the small loan business? A Oh, no, I did not.

Q You did not tell them that? A No.

Q You told them it was in the small loan business? A Yes, sir.

Q Which was very successful in that business? A Yes, sir.

Q And by reason of that success in that business they were able to pay rather large dividends? A No, I wouldn't put it that way. I cited I think to be exact in the Tennant case, or one of the cases I told them about a block of National City stock they sold at a certain price, they bought at a certain price and sold at a certain price, and made a tremendous profit on it.

Q Were you consulted about any investments that the Universal Finance Corporation made? A Never.

Q Did you have any knowledge as to how much money they had out in the small loan business and how much in the stock market and how much in the bank and how much they owed the bank? A No.

Q You did not know any of that business? A No.

Q How many sales did you make? A Oh, I don't think I made more than ten or fifteen sales in all.

Q Do you remember the names of the people, any of them, to whom you told specifically that the corporation was investing or speculating in the stock market? A In every one of these cases mentioned today—there was a Mrs. Robinson of Brightwaters, who came over to the office, and I told her the same thing and she said then if that is the case why can't I invest my money in some of the securities you buy?

Q What other names? A I don't remember.

Q As I understand it, you did not then know what profit was being made by this company in the small loan business? A No.

Q You were never told that by any of the officers? A No.

Q Nor by Edwards? A No.

DEWI T. EVANS, one of the defendants, sworn in his own behalf.

Direct examination by Mr. Vickers.

Q Where do you live? A State and Prospect streets, Trenton, New Jersey.

Q And how long have you lived there? A All my life.

Q What is your business at the present time? A I am the owner of D. T. Evans Company, Investment Counsel, in Trenton. Trenton Trust Company Building.

Q How long has that business been in existence? A Since 1926.

Q You were the president of the Universal Finance Corporation? A Secretary and treasurer.

Q I meant secretary and treasurer. When did you become the secretary and treasurer of this company? A I think March 24, 1928.

Q In what other business or occupation have you been engaged? A I was associated with the State of New Jersey for fifteen years engaged in the security and finance work in the office of the State Comptroller and Attorney General's office.

Q How long were you in the State Comptroller's office? A About thirteen years.

Q In the Universal Finance Corporation had you anything to do with the selection of the securities which from time to time were purchased and sold by that company? A I recommend certain securities to the Board of Directors which they later purchased.

Q Through whom were the securities obtained? A The National City Company, which is the securities subsidiary company of the Na-

tional City Bank of New York. The Broad & Market Securities Corporation, which is the security subsidiary of the New Jersey National Bank and Trust Company. The Interstate Corporation, which is the security subsidiary for the Interstate Trust Company of New York City.

Q The National City Company, is that the company that Mr. Fitzmaurice spoke of? A Yes, sir.

Q The plan of investing these surplus moneys on hand in the treasury of the Universal Finance Corporation and selecting these securities, was that done by conference with anyone connected with your corporation? A I discussed the matter with the Board of Directors.

Q During these discussions did Mr. Fitzmaurice participate? A He did.

Q Did—the securities which were bought, were they bought on margin or bought outright? A All of the securities were purchased outright.

Q When they were procured where were they deposited? A With the Broad & Market National Bank in Newark.

Q The Broad & Market National Bank became the transfer agent of the Universal Finance Company, did it not? A It did.

Q So far as the acquisition and sale of securities that have been referred to here, did you ever independent of the Board of Directors, act either in the purchase or sale or retention of these securities? A No.

Q I show you Exhibit D. 18 for identification and ask you whether as of June 30, 1928, that correctly shows the list of securities in the hands of the Universal Finance Corporation? A It does.

Q And are those the securities in part to which your testimony has referred? A They are.

Mr. Vickers: I offer it in evidence.

Mr. Conlon: I have no objection

(The same is received in evidence and marked Exhibit D. 18.)

Q Now, Mr. Evans, from your experience as a security counselor, and your experience in the Comptroller's office in New Jersey, can you tell this Court and jury whether or not the securities there listed are standard and what their character is from an investment point of view? A Each one of those securities in my opinion is a high grade investment.

Q Approximately can you tell the highest amount of money of the Universal Finance Corporation that was at any time invested in these securities? A I think about $180,000.

Q Approxiately can you tell the amount now invested in securities?

Objected to.

Objection sustained.

Q Can you approximately tell the amount invested in securities as of the 30th day of March, 1929?

Mr. Conlon: I object to it.

The Court: I will permit it.

A $56,000.

Mr. Conlon: This particular question, your Honor, it doesn't make any difference, but any questioning along this line is going to open the door to testimony that is going to create a new issue. This is March, 1929.

The Court: I appreciate that. I don't know whether it is material or not, but I do not think that is prejudicial in any way.

Q Can you tell this Court and jury whether on the difference between approximately $180,000 of which you spoke and the $50,000 remaining on the 30th day of March, 1929, the corporation realized a loss or a profit?

Mr. Conlon: I object to that. It is absolutely immaterial to the issue in this case what happened to the securities of this company after the time that the charges are laid in this particular proof.

The Court: Objection sustained.

Mr. Vickers: Will your Honor please hear me on that? Couusel has stated his objection and his reasons. The charge in this indictment is a conspiracy to defraud. The Prosecutor of the Pleas in his opening said that we played in the market, and we went out and we risked the moneys of these stockholders. Now of course if we speculated, if we gambled, it would be relevant and material to this issue. Isn't it a defense, the counterpart of that, one of the most material things as to the intention of these parties? It seems to me the result, your Honor—

The Court: Is it a purchase of stock or is it a speculation?

Mr. Vickers: No, it is a speculation as distinguished from a gamble, but every investment, the investment in an education, the investment in life, everything is in that sense a gamble, but here are men, your Honor, who are charged with bad faith.

The Court: I agree with that philosophy of reasoning, Colonel Vickers, that nearly everything in life is a speculation. I do not use "speculation" in any sense of criticism. It is however a speculation as to the outcome, as to the future of that particular stock. I suppose it becomes a gamble as distinguished from speculation when it is bought on margin and you have not the necessary capital to carry it if you are called on to produce it. This man is called on to testify to the character of the investment that they made.

Mr. Vickers: Please bear with me. Here is the situation. Here is a conspiracy to cheat. Here are concrete facts, acts by these defendants in their individual and corporate capacities, dealing with the moneys that they got, that they are said to have gotten by cheat and fraud. Now, isn't the proof of the pudding a criterion as to the way it was made? That seems to me to be this situation exactly, and when you find an investment, as this is claimed to be an investment, which is successful, are not defendants who are charged with an intention to defraud entitled to show that fact within the scope of this indictment?

The Court: Whether they made or lost money on the investment that they made is, it seems to me, absolutely immaterial to the issue as long as it is shown that the investments were made in what is generally recognized as securities of high grade and readily marketable. If the Prosecutor offered to show the converse of that proposition I would foreclose him.

Mr. Vickers: But he opened on it. That is the point, and that is a part of the State's case, the State's opening. That is why it was taken down. He went to the jury, your Honor, on the theory that these men, as he put it in his language—the fact is that here, not Edwards was running these finances, but here is the man, the treasurer of the company, who was conserving the moneys that came in. He is charged with conspiring with others to cheat and defraud investors, your Honor. The fact is that he not only did conserve, but he made their money work for them and realized a profit. If we can show that, aren't we entitled to show it?

The Court: The original ruling will stand.

Defendants' counsel prays an exception to this ruling of the Court.

Exception allowed; let it be signed; and it is signed and sealed accordingly.

DANIEL J. BRENNAN,
Judge.

Q Will you give to the Court and jury the reasons of yourself and the Board of Directors of the Universal Finance Corporation for mak-

ing these investments as they were made? A The bulk of those securities were purchased on or about May 15, 1928. At that time we had, I think in the neighborhood of $150,000 in the bank. From my knowledge of other loan companies, it would take possibly a year and a half to put that $150,000 out in small loans. Rather than have that in the bank earning a very low rate of interest, a list of securities, a diversified list of securities, commonly known in the investment world of today as an investment trust, was purchased so that the corporation had earnings shortly after its incorporation, all dividend paying securities.

Q What was the rate of interest paid by the bank? A Two per cent.

Q What was the average rate of return from these securities as compared to the interest which you were then obtaining from a bank? A I think the average yield would be about five per cent.

Q That is exclusive of any profit? A Exactly.

Q Now, in June, June 14th, if that is the correct date, your company by its Board of Directors passed a resolution declaring a ten per cent. dividend effective as of the 2nd day of July, payable then. Tell the Court and jury just what was done by you. What was done by other officers of the corporation in arriving at the conclusion to resolve to pay the dividend? A May I see the memoranda?

Q Certainly.

The Court: If you need one to refresh your recollection. Do you want to see what this one is, Mr. Conlon?

The Witness: It is in evidence.

Mr. Vickers: The witness refers to a memorandum heretofore marked for identification and known as D. 23 for identification.

A At a meeting of the Board of Directors held —

Mr. Conlon: Is that in evidence?

Q Is that the memorandum used by you at the time? A Yes, sir.

Mr. Vickers: I offer this memorandum in evidence.

Mr. Conlon: No objection.

The Court: It may be so marked.

(D. 23 for identification is received in evidence and marked Exhibit D. 23.)

A At a meeting of the Board of Directors held June 14th, the matter of the dividend was discussed at that meeting of the Board of Directors. That meeting. All the directors were present, Fitzmaurice, Tappan, Hollenbaugh and myself. The directors understood—

Mr. Conlon: I object to that.

The Court: Strike it out.

Q Just say what took place. A On that date a dividend was discussed and because of the fact that the Public Service Finance Corporation was to have no overhead expenses up until June 30th, all overhead expenses to be borne by the Public Service Sales Company, it

was my opinion as a director that the income of the corporation up to June 30th would be all net profits.

Mr. Conlon: Just a minute. I ask that that be stricken out.

The Court: I will let it stand. I think it is all material which shows or establishes their notion.

Mr. Conlon: I do not see what his notion has to do with it.

The Court: His, among others. Some other corporation was to bear the overhead, whether or not mathematically or otherwise is a moot question, but I will let him testify what his opinion was under the circumstances.

A The income of the Public Service Finance Corporation up until June 30th would be as follows: "Interest on bonds owned by the corporation, $289.59. Interest on diversified list of stocks held by the corporation, on dividend paying securities, bank stocks, insurance stocks, $900. Accrued interest on outstanding industrial small loans up to June 30th, $300." On May 15th the corporation purchased a diversified list of securities and between May 15th and June 14th several of those corporations had issued rights. We subscribed to this stock at somewhat below market price. These rights having a cash value. These rights consisted of two and a half rights of the American Exchange-Irving Trust Company, having a cash value as of June 14th, of $60. Two and a half rights American Telephone & Telegraph Company, having a value of $32. Four and one-sixth rights, New York Central

Railroad, having a value of $25. Three and one-third rights of the Guaranty Trust Company of New York, $450; that makes gross earnings of $2,046.59.

Q Now, then, you have not included up to now in that item any cash income to June 30th? A That amounted to $200.19.

Q Making a total of $2,276.78? A $2,246.78.

Q Now, then, at that time had you ever discussed the matter of the paid-in surplus? A That matter was discussed by the Board of Directors at that meeting, and as I recall it was estimated it would be on June 30th about $4,000.

Q Now, then, at that time and in the determination of the declaring of a dividend was anything done with regard to organization expenses? A From an accounting angle organization expenses are treated as—

Mr. Conlon: No.

The Court: Do not give us a history of what happens to organization expenses. The question was did anything happen with regard to organization expenses.

By Mr. Vickers.

Q How were they treated? A As deferred charges.

Q From your knowledge and experience of the situation of this business was it your judgment at that time that that was a proper act?

Mr. Conlon: Before the question is answered, I have no objection to this witness qualifying as an expert. Before the question is answered I would like it to be so offered.

Mr. Vickers: I suppose a witness can properly qualify where he can or where his judgment under the law is the criterion of his action. If he uses judgment—

The Court: I think he is sufficiently qualified from his professional experience to answer that question. Read the question.

Q (Question read.) A Yes, sir.

Q In deferring charges, from organization charges particularly, can you say whether or not at that time the period of time over which organization charges were to be deferred, was determined or left undetermined? A It was left undetermined.

Q There has been testimony in this case here that in the month of June, as of the 30th of June, there was a loss on stock investment or securities invested in. Can you tell us whether or not that was the situation as of June 14th, when your corporation resolved to pay a dividend? A The depreciation in value of securities was not as great on June 14th, considerably below the value of securities of June 30th.

Q Was there either as of June 14th or as of June 30th an actual loss, in other words, were there any securities actually sold upon which the loss was taken? A No, sir.

Q Can you tell us whether or not between the 14th day of June and the 30th day of June there was any unusual or special condition of the money market affecting the securities in question? A There was a bad break in the list of securities in the month of June, 1928.

Q Can you tell us approximately when that took place? A The last two weeks in June, 1928.

Dewi T. Evans, direct.

Q You said something about the corporation, that is to say, the Universal Finance Corporation, not being chargeable with any expenses that the Public Sales Corporation was to bear then. How did that come about? A The Board of Directors had discussed with Mr. Edwards, the owner of the Public Service Sales Company, as to the payment of all overhead expenses of the Public Service Finance Corporation up to June 30th, and Mr. Edwards agreed to take care of that overhead. The Public Service Sales Company and the Public Service Finance Corporation were occupying the same suite of offices in the National State Bank Building.

Q When I have referred in my questions to the Universal Finance Corporation as of the particular days, you understand I have referred in conjunction with its previous name of the Public Service Finance Corporation, is that right? A Yes, sir.

Q It was in fact Public Service Finance Corporation in 1914, wasn't it? A Yes.

By the Court.

Q Establishing your so-called profit for the period as of June 14th, you took into consideration or did you take as a profit the difference between the acquisition cost of these securities and the market on them as of that date? A The securities were not taken into consideration in arriving at the securities I have given.

By Mr. Vickers.

Q It has been testified in this case on the part of the State that a figure of $13,781.92 was the depreciation in the investment in the securities as of June 30, 1928. Was there such a depreciation

tion as a matter of fact? A It is my recollection that it was a lesser amount than the amount you mentioned.

Q As a matter of fact, was there an actual depreciation by reason of any sales loss? That is what I am driving at. A There was not. Securities were carried on the books of the corporation at cost.

Q And the upset in the market conditions in the latter two weeks of June—did that affect in any of the securities, the dividend rate or interest rate? A No.

Q In arriving at the figures that you have given us together with the surplus over and above the par value of stock as well as the price of stock in the hands of the Public Service Finance Corporation, did you consider that a depreciation of the market value of the securities should be taken into account? A A depreciation in the value of the securities as of June 30th and June 14th was not taken into consideration.

Q Was it your judgment that they should not be taken into account in view of the fact that you had bought them outright and you were holding them? A Yes.

By the Court.

Q I thought your testimony was they weren't considered one way or the other? A The sale of any securities.

The previous question and answer are read by the stenographer as follows:

"Q Was it your judgment that they should not be taken into account in view of the fact that you had bought them outright and you were holding them. A Yes."

Dewi T. Evans, direct.

By the Court.

Q. My understanding was that you did not take the securities into account at all in establishing the fact of the profit for the declaration of a dividend as of June 14th. A The actual sale of any securities.

Q Oh, no. My question was whether or not you took into consideration the difference between your acquisition price and the market on June 14th as establishing a profit, if there were such, in the difference between those two. A That was not taken into consideration.

Mr. Vickers: He said he did not.

By Mr. Vickers.

Q Mr. Evans, I show you Exhibit S.10, and ask you whether the original of that bore your signature? A It did.

Q And I likewise show you Exhibit S.11, and ask you whether the original of that bore your signature? A It did.

Q As to S.10, will you tell the Court and jury the circumstances under which that letter was written and its purposes, so far as you are concerned? A In November or December, 1927, Mr. Hollenbaugh and Mr. Edwards were engaged in the sale of the stock of the Plaza Loan Society in Jersey City. The New Jersey Securities Act had been passed that same year by the New Jersey Legislature. It became effective in the fall of 1927, and Mr. Edwards and Mr. Hollenbaugh were uncertain and came into the Attorney General's office to inquire whether there was anything necessary to be done under the operation of the New Jersey Securities Act. That Act

provides that the Attorney General upon complaint or otherwise—

Mr. Conlon: I object, your Honor.

The Court: No, no. Don't testify to what the law is. Just tell us what happened.

A (Continuing) Mr. Hollenbaugh and Mr. Edwards came to the Attorney General's office and inquired what they should do under the operation of the New Jersey Securities Act. I explained that as a matter of fact, the Director of the Department had a form of questionnaire which was customary for the companies—

Mr. Conlon: I object. That is immaterial and has nothing to do with the question of the letter.

Mr. Vickers: It certainly has. It is his explanation as to how the letter came to be written.

The Court: It connects up by a reference to a subsequent letter, I suppose, to the Plaza Loan Society. Why can he not tell us what Edwards and Hollenbaugh came in and did and what was done after that without this intimacy of detail?

Mr. Vickers: He says, "I have spoken to them." Here are two men that these two men are supposed to have entered into a conspiracy with. He says, "I have explained to them that it was the policy of the Attorney General's office to submit a questionnaire."

The Court: All right. If he gave them a questionnaire to answer he can testify to that fact.

A (Continuing) Such a questionnaire was given to the Plaza Sales Company, which was the selling organization for the Plaza Loan Company, and a questionnaire given to the Plaza Loan Society. These questionnaires were filed in the Attorney General's office by Mr. Edwards. That was about, I think, November, 1927. Five months later in March, 1928, Mr. Hollenbaugh and Mr. Edwards again came in to see me. They explained that they were engaged in getting a Board of Directors together incident to the organization of a small loan company in Newark and asked me if I would be interested in going on the board. At that time I told them that I would consider it and possibly give them an answer the following week. The following week I told them that I would come on the board, after discussing the matter with Mr. Plumer, who was my superior officer as Assistant Attorney General. A few days after that Mr. Hollenbaugh came in again and said that he was contemplating making application to a number of broadcasting stations in Newark and vicinity, including New York City, and asked if he should file anything in the office of the Attorney General in that connection. I told him that I thought it would be good policy to file copies of all radio talks to be used by him, in the office of the Attorney General, as he had done in his previous work in connection with the Plaza Loan Society, which Mr. Hollenbaugh did. Mr. Hollenbaugh, as near as I can fix the date, was in the office about the 27th or 28th of March. We discussed the facts as mentioned in this letter dated March 29th. Mr. Hollenbaugh asked me to confirm his visit to the Attorney General's office by letter, which I did in the shape of this letter.

Q At this time, from October or November, 1927, up to the time of the writing of this letter, what was your particular work in the Attorney General's office, Division of Securities? A The examination of all stock offerings made in the State of New Jersey.

Q After examination of stock offerings, what had you to do with regard to any communications with the offerers, or with anyone else? A If the office of the Attorney General received complaints regarding the sale of any securities, the stock offering would be checked through its capitalization and representations that were made at the time of the sale, and if there were any misrepresentations made, I would consult my superior officer, Mr. Plumer.

Q Had you then, taking now the period between October and November, 1927, to this time, any authority to communicate directly by letter with any of the persons into whose business you were inquiring or had been inquiring?

The Court: I do not understand the purport of the question.

Mr. Conlon: The witness is asked in effect whether or not he had any right to communicate by letter with the individuals of the company which he was examining. I object to that as immaterial unless the question comes within the scope of this letter.

Mr. Vickers: If I may explain, if my question is not clear—

The Court: It is not clear to me, I am frank to say.

Mr. Vickers: I want to find out whether the thing he did here is the thing he did usually and in the ordinary course of his business in the Attorney General's office.

Mr. Conlon: No objection to that.

Mr. Vickers: I will withdraw the question.

Q The writing of letters such as this to persons who communicated with the Attorney General's office, or with whom you communicated regarding their business, was that a part of your ordinary and usual work in the Division of Securities of the Attorney General's office?

Mr. Conlon: I do not want to be captious, but I object to the use of the term "letters such as this."

The Court: I will permit it. Overrule the objection.

A Yes, sir.

Q Your letter in its first paragraph says, "Incident to our conversation regarding the contemplated application for broadcasting over Station WABC by a series of investment educational talks by the Public Service Finance Corporation," I ask you whether there in fact had been such a conversation between you and Mr. Hollenbaugh previous to your writing this letter, and whether or not that conversation pertained, as this paragraph says, to prospective broadcasting over WABC? A Yes, sir.

Q Where you state in this letter, "As you know, you submitted to this office copies of the matter used by the Plaza Loan Society over Station WGCP, it was entirely satisfactory and we requested the same procedure be followed in this matter." As a matter of fact will you say whether or not there have been submitted to the office of the Attorney General copies of the

matter used by the Plaza Loan Society over Station WGCP? A There have been.

By the Court.

Q Do you mean by that these copies had been submitted to you as Examiner and you in turn submitted them to Mr. Plumer, or the Attorney General, Mr. Katzenbach, at that time? A They were submitted to him and others in the Attorney General's files.

Q Were you the sole arbiter of whether or not the situation was one that fell within the prohibition of the Act, or were they referred to Mr. Plumer or the Attorney General after you had formed an opinion in reference to any situation? A In a great many instances I formed my own opinion where a case went to court.

Q Then, you were under no obligation to report to Mr. Plumer, either your information or the record of your findings in reference to any situation? A Usually I did. I mentioned these particular radio talks to Mr. Plumer.

Q You did in this case? A I mentioned these radio talks and mentioned my letter to Mr. Plumer.

By Mr. Vickers.

Q Did you say that where you examined and reached your own conclusion you communicated that conclusion as Examiner without reference to Mr. Plumer unless it was a special matter which went to court or was likely to go to court? A Yes, sir.

Q Now, in the last paragraph you say, "In view of our close connections along this line and my personal knowledge of the activities of the Public Service Finance Corporation I feel your

plans will meet with the approval of this office." What knowledge had you that you referred to as your personal knowledge of the activities of the Public Service Finance Company, and from what sources and from whom did you obtain that knowledge? A I was a director of the Public Service Finance Corporation.

Q How long prior to March 29th, the date of this letter, had you been a director of the Public Service Finance Corporation? A A week.

Q What had you done in the interim between the time of joining this company or by way of inquiry before you joined it to acquaint yourself with the activities of the Public Service Finance Corporation? A I had an investigation made of the other directors, the other directors being unknown to me. I had checked over the proposed charter and by-laws and capitalization and the proposed plans of the directors.

Q From whom did you get the information on those subjects which you have just detailed? In what way? A From various commercial agencies in Newark.

By the Court.

Q Did you know about this sales promotion contract between the Public Service Sales Company and the Public Service Finance Company, whether it had at that time been consummated? A To my recollection of the date of this letter that contract had not been consummated.

By Mr. Vickers.

Q At the time of the writing of that letter and from your previous knowledge of the work carried on by Mr. Edwards in the promotion of the

Plaza Loan Society, did you know that a sales talk offering over the radio and otherwise stock was contemplated? A Yes, sir.

(At one o'clock P. M. the Court takes a recess for one hour.)

AFTER RECESS

DEWI T. EVANS, recalled in his own behalf.

Direct examination (continued) by Mr. Vickers.

Q At the time of the writing of this letter, S.10, what did you mean by the statement "Your plans will meet with the approval of this office" contained in the last paragraph?

Mr. Conlon: I object.

The Court: Sustain the objection.

Mr. Vickers: Exception prayed.

Exception signed and sealed accordingly.

DANIEL J. BRENNAN,
Judge.

Q What plans did you have reference to, the subject of any conversation between you and Mr. Hollenbaugh to which you referred in the last paragraph of that letter?

Mr. Conlon: Just a minute. Will you read the first part of that question, Mr. Stenographer?

(The stenographer reads as follows:

"Q What plans did you have reference to, the subject-matter of any conversation

between you and Mr. Hollenbaugh to which you referred in the last paragraph of that letter?'')

A Mr. Hollenbaugh told me that he would file copies of the radio talks to be used over the radio and send it to the office of the Attorney General before hearing them on the air, and I used the words "approval of this office," meaning by that the approval of Mr. Hollenbaugh's plans incident to his conversation with me that he would file copies of these talks with the Attorney General's office; under the operation of the New Jersey Securities Act, the Attorney General cannot approve a security offering.

Q The security offered, that is to say the incident as to whether or not the securities offered were good investments or bad investments, was that a subject of your inquiry and duties as an examiner in the Attorney General's office in the Division of Securities? A No.

Q So far as an approval was concerned, did you have any right, or any time exercise the right to approve any securities in your capacity as an examiner in the Division of Securities in the Attorney General's office? A No.

Q At the time you wrote this letter, S.10, was there any conversation between you and Mr. Hollenbaugh that any use should be made of this letter by any broadcasting company? A No.

Q Did you write the letter with any such purpose?

Mr. Conlon: I object.

The Court: Sustain the objection.

Defendants' counsel prays an exception to this ruling of the Court.

Exception allowed; let it be signed, and it is signed and sealed accordingly.

DANIEL J. BRENNAN,
Judge.

Q Regarding the letter S. 11, I ask you whether at the time it was written, or at any time after it was written, that it was written by you for the purpose of influencing the sale of stock of the Universal Finance Corporation?

Mr. Conlon: I object.

The Court: Sustain the objection.

Mr. Vickers: May we have the ground of the objection stated on the record?

Mr. Conlon: The letter speaks for itself and the purpose and effect of it is a matter of argument.

Mr. Vickers: If that is the position the State takes we respectfully submit that the purpose of it in this kind of a case is essentially as the language implies, to offset the charge that we had intent to conspire.

The Court: It is used as the manner of circumstances which have been testified to so far in the present condition of the record.

Mr. Vickers: The letter, take note, does not deal with the Universal Finance Corporation, it deals with an entirely different corporation and except as it is inferred that it was done for the purpose of influencing this sale, it has no relevancy.

The Court: There has been testimony as to the continuity of action involving these officials, the history of which this defendant is familiar with.

Mr. Vickers: Absolutely. Of course, if it were written only to affect the Plaza Loan Society, it would have no relevancy or materiality.

The Court: That is true.

Mr. Vickers: If the letter spoke for itself it would not be evidential, but it is only because of the question brought up by the State that an explanation is necessary.

The Court: What the purpose of the letter was, whether or not it was designed to be used for a specific purpose, is a jury question, in my judgment.

Will the stenographer read that last question?

Q (Question read.)

The Court: I will permit it. Overrule the objection.

A No.

Q Now, then, when these letters were written at the time what, so far as you know, became of the carbon copies? A To the best of my knowledge they went into the possession of the Attorney General's Office.

Q Had you personally anything to do in the course of your employment with the filing of carbon copies? A No.

Q Whose work was that? A The stenographer.

Q A girl in the office? A Yes, sir.

Q It has been testified in this case that a carbon copy of one of these letters was on a day later in December, as I recall it, filed in your presence in a box belonging to you which was in

your desk. You were present at such an occurrence, were you? A Yes, sir.

Q Will you tell the circumstances under which this happened? A I went into the Attorney General's Office, I think, a couple of days after Christmas, and I talked with Mr. Wallace, and some time prior to that Mr. Plumer had instructed Mr. Wallace to go through my desk.

Q Who told you that? A Mr. Wallace. Mr. Plumer had instructed Mr. Wallace to go through my desk to see if there was anything in the desk that applied to any of my investigations or applied to any of my work incident to the Attorney General's Office. Mr. Wallace went through my desk, after having procured a key for this box, which has been mentioned, in my desk. I always leave my desk unlocked, I don't carry a key to the box on my person. And Mr. Wallace there and then found a carbon copy of a letter dated March 29th and he put the letter back in the box.

Q A carbon copy? A Yes, and the next time I came into the office he asked me to look through the box and see if there wasn't a carbon copy of the letter dated March 29th in the box, which I did, and I found a letter and I turned it over to Mr. Plumer.

Q Now, then, with regard to the figures which went to make up your calculations and entered into the occasion of the Board of Directors in resolving to pay a dividend as of September 30, 1928, what course did you pursue with regard to that? A At a meeting of the Board of Directors held on or about September 12th, to the best of my knowledge, the following items were considered by the Board of Directors.

Q Supplied as to figures by you? A Yes. The cash income for the month of July—

Dewi T. Evans, cross.

By Mr. Conlon.

Q Are you referring to a memorandum? A Yes.

Mr. Conlon: May I question the witness as to the memorandum?

The Court: You may, Mr. Conlon.

Cross examination by Mr. Conlon.

Q Might I see it? This first sheet is the only one you are referring to now, is it? A Yes, sir.

Q When was this made up? A On or about September 12th, possibly.

Q Where is the original? Is this the original copy or is this a carbon copy? A That is the carbon copy.

Q Where is the original? A I think my attorney has it.

Q Who made this up? A Who made that up?

Q Yes. A The stenographer in the office.

Q From what data? A From my penciled figures.

Q Where are your penciled figures? A I have not got them. Just a rough memorandum.

Q Is this the paper that you had at the meeting in September? A No, sir.

Q What paper did you have at the meeting in September? A A pencil memorandum.

Q And where is the pencil memorandum? A I haven't got it.

Q When was this made up by your stenographer? A That particular copy?

Q Yes. A I can't give an exact date.

New Jersey State Library

Q Well, about? A I cannot give an exact date.

Q Can you tell within a month? A I think in December.

Q You think in December. You mean after the complaint was made in this case? A No, I think no.

Q Before the complaint was made in this case? A Yes.

Q Before the December meeting which declared the dividend for the period ending December 31st? A I cannot give the date to that extent.

Q Where is the pencil memorandum now? A It has been destroyed.

Q When was it destroyed? A I cannot give the date.

Q Where was this paper at the time the papers of your office were seized by this office, by the Prosecutor's Office? A At my home in Trenton.

Mr. Conlon: I object to the use of the memorandum.

Mr. Vickers: On what theory?

Mr. Conlon: The theory that it is not a memorandum of this defendant. It is not connected up with the memorandum that he had at the time.

Mr. Vickers: That is not the evidence. It may be a theory.

The Court: How is it the best evidence under the circumstances?

Mr. Vickers: I do not think, your Honor, that the rule of best evidence applies. The question is whether the matters contained

in that memorandum that was made by him at the time—

The Court: It was not made by him.

Mr. Vickers: Yes, certainly.

The Court: No, it was not. The original pencil memorandum was made by him, but these purport to be copies made by a stenographer.

Mr. Vickers: On the original pencil memorandum.

The Court: Oh, no. The only way we could tell that is by seeing the memorandum. Maybe the stenographer copied the thing incorrectly. I do not know. I should say that one of two sources would be proper, either the original books of account or the transcript made in the handwriting of this defendant at the time from the books of account.

Direct examination (continued) by Mr. Vickers.

Q Mr. Evans, from what was the original penciled memorandum made up? A From the books of the corporation, together with two estimated amounts estimated by myself.

Q And the estimated amounts refer to what? —not the figures, but the subject-matter of them. A Accrued interest on loan to September 30th. Accrued dividends on securities owned by the corporation to September 30th.

Q Can you for the figures which you have on the memorandum refer to the original books of the corporation as of that time and verify the figures you have before you? A Yes, sir.

Q All right, let us do it that way.

Dewi T. Evans, direct.

Mr. Conlon: May I ask the witness another question in reference to this memorandum, your Honor?

The Court: Yes.

Cross examination (continued) by Mr. Conlon.

Q What other papers besides these memoranda did you have in your home at Trenton at the time of this seizure by the Prosecutor's office pertaining to the Investment Finance Corporation?

Mr. Vickers: Objected to on the ground that it is not proper cross examination at this time. The witness is not under cross examination and the subject matter on which he is interrogated has been abandoned.

Mr. Conlon: I withdraw the question.

The Court: I sustain the objection.

Direct examination (continued) by Mr. Vickers.

Q Are these the books of the company which I lay before you? A To the best of my knowledge.

Q Will you take from those books the cash income for the month of July, 1928? By the way, you did not keep the books yourself, did you? A I have never made an entry in the books.

Q Mr. Hardy was the bookkeeper, is that right? A You will have to have someone show me where these entries are.

Q Were they shown to you at that time by the bookkeeper? A At the time these memorandums were made up?

Q Yes. Where did you get these memorandums? A From copies of profit and loss statements and from balance sheets.

Q Will you turn to the books and find out where your figure for cash income for the month of July is derived?

Mr. Conlon: I object to the witness using this memorandum. The memorandum is withdrawn.

Mr. Vickers: He has a right to find out from the memorandum what he is looking for.

Mr. Conlon: I think if this memorandum is not to be used it is not to be used for any purpose.

The Court: I so rule. I very clearly indicated it must not be used.

Mr. Vickers: I am not asking him to testify to it. I am asking him to refer to this memorandum and show from the books where he arrives at a certain figure in giving the figure, your Honor.

The Court: Well, I can see that we will probably be here for the better part of the day if he is subjected to explore these original sources for that information. I do not know how the accounts are made up, but I suppose to the major items he can refer to what they are, as to income from so and so, to establish a similar account in the books.

Mr. Conlon: I do not want to be accused of causing a long method to prove something simple, but I think it is pertinent to know what this witness knew about the thing, and I think that is clearly to be shown by what

he knows about the books, not by the use of this memoranda not before the Court.

Mr. Vickers: I do not suppose that in any business the treasurer relies on his own knowledge of the items, but gets them from the bookkeeper.

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The Court: I will let you use that for expedition, for the purpose of establishing what the source of figures was, what his book source was.

A May I say something?

The Court: No, just use the memorandum and tell Colonel Vickers what he wants to know.

20

A During the month of July the cash income was $316.39. During the month of August $427.41. During the month of September $4,297.32; that makes a total of—

By Mr. Vickers.

Q Wait a minute. So far your figure for cash income during the month of July is given as $316.39. Will you check that against the memo-
30 randum which you have before you and see whether it coincides or not? A There is a difference of $1.25.

Q It does not coincide, does it? A No.

Q Now check and see which figure is correct, the figure you quoted of $316.39, or the figure you say differed by one dollar and some cents? A The figure of $316.39 is correct.

Q Now, then, give me the total. A That
40 makes a total of $5,042.37.

Dewi T. Evans, direct.

Q Are you taking the total from your memorandum or the total by having added the three figures together that you just took from the book? Will you give us that? A That makes a total of $6,101.31.

Q What figure have you added? A $316.39, and $74.80.

Q Where did you get that figure, $427.41 as the figure you gave? A That makes a total of $4,897.32.

Q Tell us what figures you are adding up? A $316.39, $427.41 and $4,297.32.

Q All right; now add them. A $5,042.12.

Q $5,041.12? A Yes. To that amount was added the two estimated amounts of accrued interest on outstanding loans to September 30th.

Q Stop a minute there. How did you estimate the accrued interest on outstanding loans as of September 30th? A The loan balance as of September 30th was $41,387.61. The loan balance for the month prior, August, was $24,936.24.

The Court: The question is, how did you estimate the accrual. There should be a simple answer to that.

A The difference between $41,000 and $24,000 is about $17,000, one and a half per cent. of that.

By the Court.

Q The testimony already in the record on the part of one or more accountants is an average of one and a half per cent.

Mr. Vickers: Yes, that is what I wanted him to see, but if I asked him direct the State would object.

The Court: And I would have sustained the objection.

By Mr. Vickers.

Q What is the estimated figure in dollars and cents that you carried out as effective September 30th? A $615.

Q How did you arrive at the accrued dividends on securities owned by the corporation? A As of September 30th the corporation owned securities carried on the books at their cost, totaling $109,253.28. Taking an average yield on those securities of five per cent the corporation had accrued dividends on securities owned estimated to be $1,200.

Q That is over the period beginning July 1st and ending September 30th, is that right? A Yes, sir.

Q In order to determine the total assets in your opinion available in the determination of what dividends if any should be declared, what else did you add thereto? A The date of the meeting at which the dividend was declared on or about September 12th, we estimated that the paid in surplus would amount to about $4,000 on September 30th.

Q Did you as a matter of fact take a definite figure which you added to the previous sums? A The sum of $4,025.

Q In round figures then, according to those figures your total available assets for dividend purposes in your opinion were approximately $10,800?

Mr. Conlon: That is objected to, "assets in his opinion."

(Argument.)

Dewi T. Evans, direct.

The Court: He sustains the statements of the information that these different items constitute assets of the corporation available for distribution. I will allow it.

Q (Question read.) A Yes, sir.

Q Now, then, prior to the period covered by the declared dividends as of December 31, 1928, and tell us on the books of the corporation what items you took into account in determining what, if any dividends the corporation declared upon its preferred stock, beginning with the cash income for the month of October? A Cash received, cash income during the month of October, 1928, $1,808.54. Cash income during the month of November $6,556.57. Cash income received during the month of December—

Mr. Conlon: I object to that, your Honor. This witness is not in possession of facts of the income in the month of December on December 12th when he voted for the declaration of this dividend. He is now supposed to be testifying to facts that he knew.

By the Court.

Q Where are you taking this? A I am taking this from the books.

The Court: I know it is a fact. He could not have the receipts for the month of December on the 1st of December.

Mr. Vickers: I agree with your Honor that he could not then have had them, but he had a right to take figures which were either actual or estimated into account. They eventually became, I take it, the figures.

The Court: I should say that was true. Where any actual figures were in his possession he has a right to testify, or where he bases an estimate on past experience, if you will.

Mr. Conlon: But, your Honor, as I understand it, the purpose of this testimony—

The Court: Is to establish what the source was of the dividends that were declared at the end of December.

Mr. Conlon: That was not my understanding. My understanding was that it was to show upon what this witness based his advice to the Board of Directors to declare this dividend.

The Court: Yes. Well, that is all right.

Mr. Conlon: Now, he did not have in his possession this knowledge that he is testifying to.

The Court: He did not have in his possession such as he might have up to November 30th, we will say. He had then, didn't he, Mr. Conlon?

Mr. Conlon: Yes, he had then.

Mr. Vickers: Up to the date of December 12th, or the correct date, he would have up to then.

The Court: If the figures were written up.

Mr. Vickers: And he had a right to assume.

The Court: He had a right to assume, but he would have to indicate clearly that it was estimated.

Mr. Vickers: I think that is quite right.

Dewi T. Evans, direct.

By Mr. Vickers.

Q Mr. Evans, as to the figures that you have given for October and November, were they actual figures as to dollars and cents, as you have given them? A Yes.

Q In your possession at that time? A Yes.

Q As to the month of December the actual figures, that is to say, up to the 31st, of course were not in your possession on the 12th, were they? A That is true.

Q Can you give us the actual figures of the cash income for the month of December?

Mr. Conlon: I object to that.

The Court: That is what is objected to.

Mr. Vickers: I am not saying that he had them then in his possession.

The Court: Why can he not give us, if the fact is that he estimated them, he can tell us that and tell us what the estimate was, and then I have no objection to verifying it or not as he is able, his estimate.

Q What did you estimate, if any figure, for cash for the month of December available for dividend use, as of the 31st day of December, for that month of December? A On the day of the declaration of the dividends we took into consideration profits from the sale of securities sold of approximately $5,100.

Q Let me interrupt you. I mean as to cash. Does that refer to cash in hand? A Yes.

Q It does. Oh, all right. A As of the date of the declaration.

The Court: Security profits?

Mr. Vickers: Yes.

Q How much?

The Court: $5,100, he testified.

A $5,141.85.

The Court: No.

Mr. Conlon: I object to that.

The Court: Don't refer to that. Just tell us. Don't refer to your receipts for the month of December, because you could not possibly have had those when you made up your estimate, not beyond the date that you decided to pay the dividend.

Q Mr. Evans, at the time and from day to day throughout the period and up to the 12th day of December, 1928, had you the record from the stock transactions before you? A Yes, as of that date.

Q Have you the brokers' advices? A Yes.

Q Have you them with you? A Yes.

Q Had you from day to day those brokers' advices before you when needed? A Yes.

Q From those were you then, on the 12th of December—

The Court: Isn't that all in, Colonel Vickers? He has testified among other items of income was $5,100 of securities profits.

Mr. Vickers: I thought your Honor ruled it out.

The Court: Oh, no, I did not rule it out. All I said to him was that he must not set up an actual income that was estimated income. I have no quarrel with the statement that it was $5,100 of securities profits, if that is what he says it is.

The Witness: To that was an estimated amount added of $2,000 to be the amount of interest, estimated amount of interest received on small loans during the month of December.

Q That is as of the 5th of December, being the date? A Yes.

Q Did you take that entire figure, $5,100, as the income for that month, or a lesser figure or a greater figure? A That amount, $5,100.

Q $5,100? A That is covering profits and loss securities. To that should be added an estimated amount of $2,000, being the amount of interest to be received on industrial loans during the month of December.

Q That is approximated, isn't it? A That is approximated.

Q And the approximation with respect to your December declaration of dividends—was that arrived at in the same way in which the approximation for the September dividend and the June dividend was arrived at? A Yes.

Q Now, then, in addition to those figures, what other assets did you take into consideration for the purpose of arriving at the dividends? A As of the date of the declaration of the dividend we also took into consideration two other estimated amounts, an amount of $600 which would be due on small loans, earnings of the corporation up to December 31st, and not actually received as yet, and also—

Q Wait a minute. Is that on small loans or on securities? Will you straighten me out on that? A I should have said dividends on stocks.

Q Securities? A Estimated amounts of dividends on stocks.

Q Is that what we call securities here? A Yes.

Q Not your stock? I mean, not the company's stock, but the securities owned by the company, is that right? A Yes.

Q That is $600, that item? A Yes, and an estimated amount of interest due on small loans, but not payable, of about $1,300 as of December 31st.

Q What surplus in the way of premium on the sale of stock was taken into consideration in that calculation? A It was estimated as of the date of the declaration of the dividends to be about $12,000.

Q In round figures do those items that you have enumerated total $30,000? A Yes, sir.

Q Now then as to the dividend declared as of the close of March 30th, 1929, payable on April 2nd, if that is the correct date, what did you and the directors do regarding that and what figure did you arrive at?

Mr. Conlon: I object.

The Court: Sustain the objection.

Mr. Vickers: This is within the scope of the indictment.

The Court: I have sustained the objection.

Mr. Vickers: May we know the ground of the objection, then?

Mr. Conlon: I object on the ground it is immaterial.

The Court: The objection is sustained on that ground.

Mr. Vickers: Does your Honor rule that we cannot show anything by the treasurer

of the company, the financial status of his company as of the last day within the scope of this indictment?

The Court: Yes.

Defendants' counsel prays an exception to this ruling of the Court.

Exception allowed; let it be signed, and it is signed and sealed accordingly.

DANIEL J. BRENNAN,
Judge.

Q Did your company, in fact, after the 1st day of January, 1929, pass a resolution declaring a dividend of twelve per cent. in accord with the resolution contained in Exhibit D. 24, under date of December 5, 1928?

Mr. Conlon: I object.

The Court: I will permit it.

A Yes, sir.

Q Was the dividend provided for out of the earnings of the company to the amount of twelve per cent. as contained in the resolution of the Board of Directors under date of December 5, 1928?

Mr. Conlon: I object.

The Court: Sustain the objection.

Defendants' counsel prays an exception to this ruling of the Court.

Exception allowed; let it be signed, and it is signed and sealed accordingly.

DANIEL J. BRENNAN,
Judge.

Q Did your corporation in fact pay the dividend referred to in the resolution providing that the participating feature of the six per cent. preferred stock be increased from four to six per cent., effective as of January 1, 1929? A Yes, sir.

Q Did your corporation pay that dividend out of earnings, or not?

Mr. Conlon: I object.

The Court: Sustain the objection.

Mr. Vickers: Exception.

Defendants' counsel prays an exception to this ruling of the Court.

Exception allowed; let it be signed, and it is signed and sealed accordingly.

DANIEL J. BRENNAN,
Judge.

Q Do you know how the corporation paid the dividend referred to?

Mr. Conlon: I object.

The Court: I will permit him to answer.

Mr. Conlon: Will your Honor instruct him to answer yes or no?

The Court: Answer that question yes or no.

A Yes.

Q Can you tell us from the books of the company what the operating expenses of the company were for the month of July, 1928?

Mr. Conlon: I object to this. It seems to me that this proof is capable of being put in by way of statements and not while we

wait here for this witness to take the items out. I think this testimony must be in the opinion of this witness, so he can readily answer the questions.

Mr. Vickers: We have tried to do that and counsel objected to it.

Mr. Conlon: No; I objected to a memorandum he claimed he had and it developed he did not have at the meeting.

The Court: I see no objection, but the fundamental source of proof is the books themselves, but if counsel suggests anything to expedite this trial the Court will do all it can consistent with what it deems to be the law, to cooperate in that respect.

Mr. Vickers: I tried to accomplish it, but the State objected to it and I am driven to this form of questioning.

The Court: I think there is some difference there. The witness testified that there was an original memorandum made at the time in his own handwriting, which he destroyed, and on which there could be possibly no cross examination. In view of that fact a preparation of the papers taken from the books on there is different from this memorandum dictated to the stenographer.

Mr. Vickers: I understood that the memorandum was in accord with the books of the corporation.

The Court: No, the testimony was that this copy was made from a pencil memorandum he made at that time. Isn't that true?

The Witness: Yes.

Mr. Vickers: He has a correct copy.

The Court: That is what we are obliged to assume.

Mr. Vickers: There are many things that we have to assume in the testimony of a witness.

The Court: How much?

Mr. Vickers: That is just it, your Honor. I know of no other way of proving these facts except by this method.

Q (Question read.) A From the books of the company the operating expenses for the month of July amounted to $1,306.48.

Q Will you from the books give us the operating expenses for the month of August? A $2,492.33.

Q Now, have you the operating expenses for the month of September?

By Mr. Conlon.

Q Wasn't that September that you just gave us, Mr. Evans? A No, I am in error. That was September.

Mr. Conlon: That is what I thought.

The Court: He says what he gave for August was actually September, so we want August now.

The Witness: August, $1,644.51.

By Mr. Vickers.

Q Now with respect to treating the operating expenses for the month of July, what, if anything, did you do towards arriving at a figure to be charged against the assets for the purpose of determining the dividend? A It was my opinion,

due to the fact that the company was in process of financing, that a portion of the operating expenses during the months of July, August and September should properly be charged to financing and organization expense and treated as a deferred charge and that charged that entire operating expense for those months to current income, to current operating expense.

Q And as a necessary attribute of the business that this company was doing what work, if any, involving expense was being done which became a permanent part of the cost of the future income in the operating expenses which justified, in your opinion, this deferred charge? A Such items as salaries, postage and stationery, provision for interest on stock subscriptions in my opinion could be treated as a deferred charge.

By the Court.

Q You mean your current salaries were treated as a deferred charge? A A portion of these current salaries.

By Mr. Vickers.

Q Why was that your opinion? What was there in the nature of the business that in your opinion warranted a deferred charge with regard to handling the work? A Because of the great detail incident to some sales and the stock subscription work of the corporation, practically half of the time of the employes was spent on stock subscription work.

Q And tell us the average length of a loan, $300 small loan, so called? A From twelve to fifteen months.

Q Of the detail work necessary to correctly carry on the small loan business, what propor-

tion of the work was necessary to be done at the inception of a loan which lessened during the progress of the loan? A I would say fifty per cent.

Q And what did that cover which was necessary to be done at the beginning of a loan that did not carry proportionately throughout the entire period of the running of the particular loan? A The original cost of the investigation.

Q What else? A Detail work in connection with the application of the borrower.

Q And was there an account for each individual opened and a record kept of that? A Yes.

Q Did that involve detail work? A Yes.

Q Is that what you refer to? A Yes.

By the Court.

Q What percentage of the current operating cost was carried as a deferred charge? A Fifty per cent. of certain items, such as salaries.

Q What percentage of the gross approximately, if you know? A I would say sixty per cent. of the gross operating cost, in my opinion, would be properly chargeable to current income, and approximately the balance of forty per cent. carried as a deferred charge to organization expense.

Q Were those the percentages that actually were established? A I am approximating this.

Q Well, approximately those. They were the established percentages that you adopted as the basis for determining your income? A Yes.

By Mr. Vickers.

Q Now respectively for the last month of each one of these three-months' periods, the

actual cash income as well as the actual cash outlay was estimated, was it not? A Yes.

Q Approximately by actual figures for two months and by estimation for the month of September, what figure did you carry out less the percentage allowance for the deferred charge for the period ending September 30, 1928, in round figures, as near as you can give it to me? A $3,500.

Mr. Conlon: Mr. Evans—(to the Court) Your Honor, the witness has been instructed not to use the memorandum. As I understand it that was your instructions.

The Court: I do not want him to refer to it.

Mr. Conlon: I do not know whether he did or not, but I saw him looking at it before he gave his answer.

The Court: All right. Proceed to answer.

The Witness: About $3,500.

Q Now, then, as to the operating expenses for the month of October, will you turn to the books and give the total amount of the operating expenses for the month of October? A $3,562.05.

Q And for the month of November? A $2,890.23.

Q What do the books show as to the actual operating expenses for the month of December? A $4,336.46.

Q Now, as to the months of October and November, what did you do in the way of fixing a definite figure for the amount to be charged as against income and the amount to be deferred? In other words, did you use the same principle?

A From my memory I think approximately $2,500 was charged as operating expense during the month of October and approximately $2,000 per month for the months of November and December as operating charges.

Q And as of the time when the directors met for the declaration of dividends in December, that figure could not be definitely arrived at, could it? A Not the December operating expense.

Q I want to show you Exhibit S. 21 for identification, being the minutes of the Board of Directors alleged to be held on the 12th day of June, 1928. Did you have anything personally to do with making up the minutes? A To the best of my recollection I dictated this minute.

Q At the time or some subsequent time? A At a subsequent date.

Q Do you know from your examination of the records of the company whether or not the amount of the dividends there set out included dividends on stocks of stockholders that on the 12th day of June were not yet holders of the corporation? A That dividend was payable to stockholders of record as of June 20th.

Q That does not answer my question. Do you know from your knowledge of the books of the company whether there is included in that dividend any sum of money to pay the stockholders, not stockholders as of the 12th day of June, 1928?

The Court: Do you mean by that, those who had not completed their subscriptions?

Mr. Vickers: Yes. I want to show that the date is an error, manifestly.

The Court: I do not get the point of that question.

Mr. Vickers: May I tell the Court? I do not want to argue it out before the jury.

The Court: Very well.

(Court and counsel confer.)

Mr. Conlon: Is there any objection to my looking at any of these books, Colonel?

Mr. Vickers: No, you are more familiar with them than I am. You have had them longer.

The Court: The question is still open as of record. Do you wish to interpose an objection to the question?

Q (Question read.)

Mr. Conlon: No objection, if he knows of his own knowledge from the books of the company.

The Witness: Will you read that question to me again?

Q (Question read.) A Yes, sir.

Q Can you tell from the books of the company that in fact the check which is referred to as a dividend check to be deposited in the dividend account was deposited in the bank to such account?

Mr. Conlon: I will admit on the 29th of June. I just looked it up.

Q Now, who computed the dividend on the stocks that were of record and to be paid out to the stockholders as of the 20th day of June? A Haskins & Sells, certified public accountants.

Q By the way, does that also refer to September and December and to any other dividend that was paid? A Yes, sir.

Q There has been testimony that there were issued 505,001 shares of stock in the Public Service Finance Company or/and Universal Finance Corporation. Do you know from your own knowledge whether that is the fact or not the fact? A That is not the fact.

Mr. Conlon: You are speaking now of the common stock?

Mr. Vickers: Yes.

Mr. Conlon: I think it was testified that it was generally admitted that there was a mistake in one share.

Mr. Vickers: Do you mean a mistake of someone else?

Mr. Conlon: I mean a clerical error. I do not hardly think there is much moment to that, and no point was made of it.

Mr. Vickers: I think it is important in this case because Mr. Cohn is the man who testified to that.

Q I show you what purports to be a stock book, and I think it is admitted in evidence and marked Exhibit S. 20, a stock book of the Public Finance Corporation, and I call your attention to certificate No. 2, issued to Dewi T. Evans for 333 shares, and I ask you whether your own certificate corresponds in number of shares to the stub there?

Mr. Conlon: I object. The evidence is as to the Universal Finance Corporation. I understand all new stock was issued when the name was changed.

(Argument.)

A Yes, sir.

Q I show you S. 19, and I call your attention to stub No. 3 for 333 shares to Dewi T. Evans, and I ask you whether your certificate of stock issued and delivered to you corresponds in number of shares to the entry on the stub? A It does.

Q I show you the actual certificate No. 3, and I ask you whether that is the original certificate issued to you? A It is.

Q At any time to your knowledge was there any over issue of one share or any over issue of the stock of the Universal Finance Corporation? A Not to my knowledge.

Q By the way, in your various computations of assets of this corporation, did you ever take into account the value of the lease which the corporation had for the premises at the corner of Broad & Market? A That has never been taken into consideration.

Q I show you a paper dated June 1, 1928, and I ask you if that is the lease entered into between your corporation and the landlord of the premises? A It is.

Mr. Vickers: I offer this lease in evidence.

Mr. Conlon: No objection.

The Court: It may be so marked.

(Lease is received in evidence and marked Exhibit D. 29.)

Mr. Vickers: So I will not have to read the terms and conditions of the lease in the record I desire to have the term of the lease noted on the record.

Mr. Conlon: No objection to that.

Mr. Vickers: It is an eight-year lease.

Dewi T. Evans, direct.

The Court: You desire to indicate that the lease is for eight years from what date?

Mr. Vickers: The first day of June, 1928, and ending the 30th day of June, 1936.

Q By the way, did you know of your own knowledge whether or not the corporation was licensed by the State of New Jersey? A It was licensed by the State of New Jersey.

By the Court.

Q Did you know that of your own knowledge? That is the question. A Yes.

By Mr. Vickers.

Q How did you acquire that knowledge? A I personally received the license from the Department of Banking & Insurance in Trenton.

Q During the term of your operation where was the actual license? A Displayed on the walls of the office of the corporation at Broad and Market streets.

Q Where the company was doing business? A Yes.

Q By the way, this company had a branch, did it not? A A branch office was opened in New Brunswick, as I recall, on November 1, 1928.

Q Was that branch office licensed? A Yes.

Q How do you know that? A I personally received the license from the Department of Banking & Insurance.

Q I show you Exhibit D. 14 for identification and ask you whether that is the original license to which you have referred? A Yes.

Mr. Conlon: I will admit the license.

Mr. Vickers: I offer it in evidence.

(The same, which was previously marked Exhibit D. 14 for identification, is received in evidence and marked Exhibit D. 14.)

Q I show you Exhibit D. 12 for identification, and ask you whether you know that that bond was executed on behalf of your company according to its tenor? A It was.

Mr. Vickers: I offer that in evidence.

(The same, which was previously marked Exhibit D. 12 for identification, is received in evidence and marked Exhibit D. 12.)

Q I show you Exhibit D. 13 for identification and ask you whether you know that this bond of the Universal Finance Corporation of Newark, New Jersey, to the State of New Jersey, was executed by your corporation to the State according to its tenor? A It was.

Mr. Vickers: I offer it in evidence.

Mr. Conlon: I object to this one, your Honor. This was filed March 1, 1929.

Mr. Vickers: We had to file it that date, you see, because under the law you have to renew it each first of the year.

The Court: Is there any question about the fact that there was a bond filed?

Mr. Conlon: The objection is, your Honor, that I do not want to broaden the issue, and anything that comes in of that date may be subject to explanation.

The Court: Why can he not be asked whether or not the bond originally filed was renewed?

Mr. Vickers: I will do it.

The Court: I take it that that is what those are, renewal bonds.

Mr. Vickers: This is the original and that is the renewal.

Q The original bond, D. 12 in evidence, was that on the 1st of March of this year renewed as required by the statute? A It was.

Mr. Vickers: I will withdraw the offer then of the second bond.

Q As secretary and treasurer of this company, from your knowledge of other small loan businesses and from your experience, can you say whether or not during the time this company was operating there were rules and regulations of the Department of Banking & Insurance affecting small loan companies or companies organized under the so-called Egan Act? A Yes.

Q And were there regulations? I asked you whether you knew and you said yes. Now, were there regulations? A Yes.

Q Were you aware of them? A Yes.

Q There has been evidence in this case that your corporation used the term "industrial banking." What, if anything, can you say as to the use of that term applied to the character of business which your company was conducting? A The phrase "industrial banking" is a trade phrase that has been used, to the best of my knowledge, in New Jersey, by companies engaged in the small loan business since 1914. It is a phrase that is used throughout the country and has been for some years.

Q I show you a pamphlet and ask you whether or not you knew that the Public Service Sales

Corporation or the Financial Investment Company was permitting the salesmen who sold the stock of your company to refer to and make use in their sales of the pamphlet which you have before you? A The salesmen of the Financial Investment Company used this pamphlet.

Q And the pamphlet itself is not gotten up by your company nor by the Financial Investment Company, is it? A No, sir.

Mr. Vickers: I offer it.

Mr. Conlon: I object to it, your Honor, on the ground it is material.

The Court: I will permit it; objection overruled.

Mr. Conlon: We are not bound by anything that is said in there by anybody. It is simply a statement of different people as to what they think of this business. I do not see how it can possibly bind us.

The Court: It goes, I suppose, or it tends to prove that the term "industrial banking" may have been generally used and generally understood.

(The same is received in evidence and marked Exhibit D. 30.)

Q Did you ever represent to anyone or instruct anyone else to represent to anyone or permit anybody else knowingly to represent to anyone that your company was engaged in banking? A No, sir.

Q I show you a number of printed pamphlets or prospectuses that have been offered in evidence here, and ask you whether you are familiar with them, whether you knew at the time that they were being used by members of the Finan-

cial Investment Company, Public Service Sales Corporation and sales agents engaged in the sale of the preferred stock of the Universal Finance Corporation and Public Service Finance Corporation? A I was familiar with these.

Q I call your attention to Exhibit S. 13 on the inside page, No. 3, an article and apparently headed by your picture and your signature, and I ask you whether you authorized the use of your signature on the article printed there? A I did.

Q Will you read the matter which is there printed over your facsimile signature and tell this Court and jury whether or not the statements and each of the statements which relate to a fact or purport to be a fact were in your opinion at the time of signing the article or permitting your facsimile signature to be subscribed thereto, to be true? A Shall I read this aloud?

Q No.

Mr. Conlon: I object to that. There is no allegation that everything is untrue about the whole pamphlet.

The Court: Is it objected to?

Mr. Conlon: I will withdraw the objection.

A All statements made in that letter are true, to the best of my knowledge.

Q I show you Exhibit S. 4, for the purpose of the record being a typewritten letter without date, signed by Mr. Cawthorne, treasurer of the Financial Investment Company. At the time of the issuance of that circular letter had you any knowledge of it? A I don't recall having seen this letter.

Q Had you anything to do as an officer or stockholder or director or in any other capacity with the Financial Investment Corporation? A No.

(Adjourned to Wednesday, June 5, 1929, at ten o'clock A. M.)

ESSEX COUNTY COURT OF QUARTER SESSIONS.

Wednesday, June 5, 1929.

SEVENTH DAY.

Contiuned pursuant to adjournment.

Present, counsel as before stated.

Mr. Vickers: For the purpose of the record and to obtain a ruling of the Court we offer to prove the financial condition of the Universal Finance Corporation as of March 30, 1929, for the purpose of proving the actual value of the stock alleged to have been fraudulently sold with the intent to cheat and defraud divers persons, according to the terms of the indictment, between the 28th day of March, 1928, and the date of the inquisition, which is March 30, 1929, and to prove this by a balance sheet, a part of the records of the corporation, which balance sheet is furnished by Haskins & Sells, the accountants, and certified to by them.

The Court: That offer is overruled.

Exception prayed and allowed and signed and sealed accordingly.

DANIEL J. BRENNAN,
Judge.

Mr. Vickers: Second, we desire to prove from the treasurer's records, the treasurer being the witness now on the stand, that on March 30, 1929, said corporation had surplus earnings over and above the dividends declared on December 5, 1928, and in March, 1929, and in addition to all of the dividends previously paid out of earnings of the company.

The Court: That offer is overruled for the purpose of the record.

Exception prayed and allowed and signed and sealed accordingly.

DANIEL J. BRENNAN,
Judge.

Mr. Vickers: We offer to prove that on March 30, 1929, according to the books of the corporation and the balance sheet prepared by Haskins & Sells, there was a surplus arising from premiums on sales of preferred capital stock of the amount of $20,371.25; that there was a profit and loss surplus of $21,374.22, making a total of $41,745.47 and that deducted from their dividends previously declared on preferred capital stock during the nine months ending March 30, 1929, in the sum of $13,607.29, there was a balance of $28,138.18 and for the period referred to that includes the dividend of $1,208.75, which to obtain the net profit and loss should be added to the sum of $13,607.29.

The Court: That offer is overruled, and the Court now indicates that the limit to which these defendants will be permitted in the financial condition of the corporation as of the calendar year 1928 and that it may in addition be permitted to show the fact of payment of the dividend declared December 5, 1928, and the date when that dividend was paid.

Exception prayed; allowed and signed and sealed accordingly.

DANIEL J. BRENNAN,
Judge.

Mr. Hobart: May it be understood that the financial statement of Haskins & Sells be marked for identification?

The Court: Yes, as I conceive the law there can be no objection to marking any paper for identification.

(Statement of Haskins & Sells referred to by Mr. Vickers, of March 30, 1929, is marked D. 31 for identification.)

DEWI T. EVANS, resumes the stand.

Direct examination (continued) by Mr. Vickers.

Q Mr. Evans, from the books of the Universal Finance Corporation, can you give to us the loan balances for the various months, beginning July 1st—August, September, November and so on? A July 31st—

Q No, the June 30th. July 1st I want. June 30th loan balance. Then that would be July 1st or June 30th either way you want to put it.

A I have not the June 30th book here. This starts July 1st.

Q You have got the general ledger there, haven't you?

Mr. Conlon: If your Honor please, I am willing to stipulate that.

Mr. Vickers: Yes, I think it has been proved.

Mr. Hobart: Mr. Cohn testified to it.

Mr. Vickers: What is it, ten thousand and something?

Mr. Conlon: $10,107.07, I believe.

The Court: As of what period?

Mr. Conlon: That is as of June 30th.

The Court: All right, it is stipulated that that is the figure.

Q Supposing you take it as of July 31st. A $16,153.70; August 31st, $24,936.24; September 30th, $41,387.61; October 31st, $61,848.26; November 30th, $78,106.27; December 31st, $101,269.63.

Q Now as of January 31st.

Objected to.

Objection sustained.

Defendants' counsel prays an exception to this ruling of the Court.

Exception allowed; let it be signed, and it is signed and sealed accordingly.

DANIEL J. BRENNAN,
Judge.

Mr. Vickers: And the same ruling applies for any subsequent months, including the 30th day of March, 1929?

The Court: Yes, that will be the same ruling.

Defendants' counsel prays an exception to this ruling of the Court.

Exception allowed; let it be signed, and it is signed and sealed accordingly.

DANIEL J. BRENNAN,
Judge.

Q Can you give approximately the number of stockholders of preferred stock of the Universal Finance Corporation as of the 31st day of December, 1928? A Approximately 1,600 stockholders and subscribers.

Q Can you give us, either accurately or approximately, the number of stockholders or persons who had completed their contracts and received their stock as of the 31st day of December, 1928? A About 900.

Q With respect to the action by the corporation in the matter of the increase of the capital stock by an amendment of its certificate of incorporation, can you tell us the purpose which led to that increase? A The purpose for the increase in the capitalization was to follow through the plans of the Board of Directors to acquire other loan companies and to establish branch offices throughout New Jersey and Pennsylvania. One branch office was opened in New Brunswick and others were contemplated in December to be opened in Elizabeth, in Perth Amboy, and possibly one in Pennslyvania.

Q With regard to the acquisition of other loan companies at any time during this period were there negotiations pending and were any negotiations consummated in the matter of the acquisition of any other loan company or com-

panies by the Universal Finance Corporation? A Negotiations were pending for the acquisition of two other small loan companies.

Q And were either of those two small loan companies actually acquired by your company? A They were.

Q Both or one? A Both.

Q Was anything done in pursuance of the plan to operate in the State of Pennslyvania?

Mr. Conlon: While the time is not being fixed in these questions, your Honor, may the witness be instructed to confine his answers to the period ending December 31, 1928?

The Court: I assume it is within that period. I think you can fix it in your question. Can you?

Mr. Vickers: Well, it was my intention to limit it as of the 30th of March, the time of the indictment, so far as their carrying out any plans which were contemplated at the time.

The Court: I see no serious objection to that, Mr. Conlon.

Mr. Vickers: I do not know as a matter of fact whether within that time it was done.

Mr. Conlon: There may be no objection except that if it is opened, in one respect, I do not know where we are going to go.

The Court: I am going to let him answer, irrespective of the time it was done, if the action was taken within the calendar year ending December 31, 1928.

Mr. Vickers: Not up to March 30th?

The Court: No. I say irrespective of the time that the action actually was taken if it were contemplated within the calendar year, if that decision was had within the year, I will let him show the fact of when the actual action was taken.

Mr. Vickers: May I amend my question, then?

Q Were any steps taken by your company within the calendar year, 1928, towards carrying out the plant to operate in the State of Pennsylvania? A The matter had been mentioned by the Board of Directors. The application had been made in Pennsylvania up to December 31st.

Q You mean the formal application to the State of Pennsylvania to do business there had not been made up to the end of the year? Is that right? A No.

Mr. Vickers: Does the Court bar the question of going up to the 30th of March?

The Court: In the absence of any formal application, yes.

Mr. Vickers: I was going to ask the question whether up to the 30th of March—

The Court: My indication if steps were actually taken in the sense of applications, we will say, for license during the calendar year, there is no objection to showing the granting of it after that, but what happened after the 30th of December, if it were in the nature of an application, I would not permit it.

Q Now, of the stockholders and subscribers you have referred to, how many were in the

State of New Jersey? A Approximately six per cent.

Q In figures, what does that mean? A About 108—110.

Q About 100, in round figures? A Yes, sir.

Q Of that number can you tell how many in the City of Newark or the County of Essex? A Ninety per cent., in my opinion, of that number.

Q Now, can you tell whether or not prior to March 30th, 1929, an application to have a license in the State of Pennsylvania as a small loan company was actually made by the Universal Finance Corporation or any of the defendants on behalf of their company?

Mr. Conlon: I object.

The Court: Sustain the objection.

Mr. Vickers: Exception. May he answer that question yes or no?

The Court: Yes, he may say that.

By the Court.

Q Can you tell whether the application was made? A The application was made.

The Court: No, that calls for either an affirmative response or a negative answer, as Colonel Vickers has indicated.

Q The question is, can you tell—yes or no? A Yes.

By Mr. Vickers.

Q Now, then, do not answer this question until the Court directs you to. Was there in fact such application made prior to March 30, 1929?

Mr. Conlon: I object.

The Court: Sustain the objection.

Defendants' counsel prays an exception to this ruling of the Court.

Exception allowed; let it be signed, and it is signed and sealed accordingly.

DANIEL J. BRENNAN,
Judge.

Q Mr. Evans, can you as treasurer of the Universal Finance Corporation tell us whether or not the Universal Finance Corporation has ever defaulted in the payment of any dividend declared by the Board of Directors? I want that answered yes or no. A No.

Q You cannot tell. Can you tell us the question. A Yes.

Q Has it ever been defaulted? A No.

Q Was the dividend declared, the twelve per cent. dividend declared in the December meeting, 1928, paid? A It was.

Q According to the resolution it was payable on January 2, 1929. Was it then paid? A It was not.

Q Can you tell us what prevented its payment? Do not give a history.

Mr. Vickers: May I ask a leading question?

The Court: You may.

Q Did these proceedings by the Attorney General in the Court of Chancery and the proceedings before Vice-Chancellor Church on an equity bill, prevent and restrain the company from paying it in time? A Yes, sir.

Dewi T. Evans, cross.

Q When, in fact, if you know, was that dividend paid? A About March 15th.

Q Mr. Evans, did you ever enter into any agreement with Dale D. Hollenbaugh, Alexander G. Edwards, Charles Perry, Walter Cawthorne, either or any of them, to cheat and defraud either persons unknown or the persons named in the indictment by means of false pretenses through selling the preferred stock of the Universal Finance Company at a fictitious price and above the actual and market value thereof? A No.

Q Did you ever enter into any agreement or combination with the persons named or with either or any of them to obtain from persons unknown or from the persons named in the indictment any sum of money in excess of $5,000, or less than $5,000, or any other sum of money by making any false representation over the radio, by the dissemination of literature, or by advertisement? A No.

Cross examination by Mr. Conlon.

Q You had in your possession yesterday three memoranda which you said were copies of a memorandum made up at the directors' meeting in June, September and December. Let me have them, please.

Mr. Vickers: I object. If I could not use them, the Prosecutor cannot see them.

Mr. Conlon: I am using them for a different purpose.

The Court: What is the purpose?

Mr. Conlon: On my cross examination as to the figures this witness had at the

meeting. They were held as merely a memorandum for the use of this witness.

Mr. Vickers: Counsel denied the right of the defendant to make use of them.

The Court: Sustain the objection.

Mr. Conlon: May I argue it?

The Court: Not after the fact of the ruling.

Mr. Conlon: I feel that I could change your Honor's opinion.

The Court: I am sure you cannot.

Q You said you had a memorandum in your possession when you attended the meetings in June, in September and December, showing the financial condition of the Universal Finance Company, so there upon that memorandum the directors could act in awarding the dividend or not?

Mr. Vickers: I object on the ground it contains an unwarranted assumption of fact. The part I object to is that part in which he states, "Upon a memorandum they could declare a dividend."

Mr. Conlon: I will withdraw that part from the question.

Q Did I understand you correctly to say yesterday that at the June and September meetings you had at that meeting a memorandum which you presented to the Board of Directors showing the condition of the company? A I had a memorandum of my own at each one of those meetings.

New Jersey State Library

Q You said yesterday that you had in your possession copies of those memorandums, is that right? A Yes, sir.

Q As a matter of fact the memorandum you had in your possession yesterday showed the balance of the business in June, September, up to the 30th of June, did it not?

Mr. Vickers: I will renew my objection.

The Court: I think that is proper, but I think it can be asked whether the memorandum he presented at the time presented such statements. I mean by that whether the memorandum he presented contained the 12th of June figures.

Q Did the memorandums that you stated yesterday you presented to the Board at the meeting on June 14th, show the figures for the entire month of June? A It did not.

Q Did the memorandum of June that you had in your possession yesterday, and which you stated was a copy of that memorandum have figures up to June 30th?

Mr. Vickers: That is objected to on the ground that that is not the fact. He presented the actual memorandum as of June 14th and it is in evidence in this case and it speaks for itself.

The Court: Objection sustained.

Q The memorandums that you presented to the Board at the meeting of September—did that memorandum have on it figures showing the income of the company for the entire month of September and up to September 30th? A It did not.

Q Did the memorandum which you had in your possession yesterday and which you said was a copy of that memorandum, have the figures showing the income up to September 30th?

Objected to.

Objection sustained.

Q Isn't it a fact that the memorandums that you had, a copy of which you stated yesterday you had presented at these several directors' meetings, were not copies of those memorandums and they could not have been copies because they showed the complete income of the business up to the end of the month of the meeting you said you attended?

Objected to.

Objection sustained.

Q Mr. Evans, you were in the employ of the office of the Attorney General, were you? A Yes, sir.

Q And before that you had been in the Comptroller's office? A Yes.

Q You say you were in the business of investment counsel in Trenton? A Yes.

Q When did you enter that business? A I think 1926.

Q And you have been in it continuously since? A Yes.

Q And in addition to those two things you were treasurer of the Universal Finance Corporation? A Yes.

Q You were under Civil Service in the Attorney General's office, were you not? A Yes, sir.

Objected to as immaterial.

The Court: I will let it stand.

Q How much time did you devote to the business of the Universal Finance Corporation? A I was in the office daily.

Q Will you answer the question?

Mr. Vickers: That is a fair answer, it seems to me. He was in the office daily, he says.

Q Is that the best answer you can give me? A The number of hours of the day or week?

Q Approximately, yes. A Approximately two to four hours a day.

Q You spent two to four hours a day in the office of the Universal Finance Corporation? A Yes, sir.

Q And in addition to that you carried on your business in Trenton as investment counsel? A Yes, sir.

Q In spite of the fact that you were under Civil Service, and as you know a person under Civil Service is bound under the law to give the full time to the position they hold under the Civil Service?

Objected to.

Objection sustained.

Q These memorandums or the information that you gave to the Board of Directors at the several meetings in June, September and December, you say indicated to you that the company had sufficient earnings with which to pay the dividends; is that correct? A In my opinion, yes.

Q Has your opinion in that respect changed? A No.

Q Then I am correct in saying that you still say that the dividends were paid out of earnings? A Yes.

Q Haskins & Sells were your accountants? A Yes.

Q Mr. Johns was in charge of the work? A Mr. Johns and Mr. Rayner.

Q Mr. Johns did most of the work and was in charge of it? A I think so.

Q You know so, don't you? A If you are speaking of the June dividend, I think Mr. Rayner did most of it, Mr. Conlon.

Q Is Mr. Johns in court? A Yes.

Q And in addition to being your accountant, Johns installed the bookkeeping system, did he not? A Mr. Rayner and Mr. Johns.

Q And they actually worked on the books until the system was installed? A Yes.

Q And that covered the period of the month of June, did it not? A Yes.

Q So that continuously through the month of June Johns or his assistant was in the office a great deal of the time actually working on the books? A Daily.

Q What? A Daily.

Q So that you were in possession at any time up to the 14th of June or up to the 30th of June at any minute to go to Mr. Johns and get from him any information that you desired from the books? A No, sir.

Q You weren't? Why not? A Haskins & Sells did not complete the detail audit of the accounts of the Universal Finance Corporation as of June 30th until September 27, 1928. Their accountants were in the office for I think over two months daily.

Q Is it your opinion that they had to complete an audit before they could give you any information from the books?

Mr. Vickers: That is objected to on the ground that this witness cannot speculate as to what they had to do.

The Court: I think the form of the question is objectionable. The line of inquiry may be pursued. The form of the question I think is objectionable.

Q You mean to say that an audit had to be made before you could get any information? A Not necessarily.

Q You could have gone to Johns and got the figures from the books and have him look them up for you, couldn't you? A They weren't compiled on June 14th; no, sir. No record.

Q No records? A No available balance sheets.

Q We are not talking about balance sheets. Your income showed in the books, didn't it, your daily business? A Surely.

Q And this memorandum, Exhibit D. 23, that is the statement that you brought into the June meeting? A Yes.

Q And that is the statement upon which the directors of this corporation awarded this dividend in June, is that right? A With one exception.

Q What was the exception? A The cash item of $200.19.

Q That was the interest on loans? A That was the income of the corporation up to June 30th.

Q That was the income on the loans? All right, then aside from that, this statement was the one on which they passed the dividend? A Yes.

Q Did Haskins & Sells or Mr. Johns have anything to do with the preparation of that statement? A No, sir.

Q Did you ask Johns to aid you in the preparation of that statement? A No, sir.

Q Did you consult him about the correctness of the figures? A No, sir.

Q Did you ever receive any requests from your stockholders or from prospects for financial statements? A As of what date?

Q Any time up to the 31st of December, 1928? A Yes.

Q Did you ever send one? A No printed copies were ever available, but stockholders who came in the office—

Q I did not ask you that.

Mr. Vickers: I ask that he be permitted to answer the question.

Mr. Conlon: I object to the answer, on the ground it is not responsive.

The Court: All right. The answer will be stricken out as not responsive.

Q Did you ever send a financial statement to anyone of your stockholders or anyone of your prospects? A No.

Q You are, as I understand it, an accountant, among other things? A I have had more experience with securities than accounting.

Q You are familiar with accounting? A Yes, sir.

Q You are an investment counselor? A That has nothing to do with accounting.

Q You have to be able to read a financial statement, don't you? A Not necessarily.

Q Can you advise an investment without reading a financial statement? A It would help a lot to be able to read a financial statement.

Q I didn't ask you whether it would help a lot or not. Do you mean to say that you can possibly give any worthwhile advice as to investments without being able to analyze a financial statement?

Mr. Vickers: I object, because I do not think the witness is called upon to characterize whether or not his advice was worthwhile.

The Court: I suppose you rely on the words "worth while"?

Mr. Conlon: I will strike out the words, "whether or not it was worthwhile."

Q (Question read as follows: "Q Do you mean to say that you can possibly give any advice as to investments without being able to analyze a financial statement?") A No.

Q You know, or profess to know, what are proper charges and credits on profit and loss accounts, do you not? A Yes, sir.

Q You have three items, referring to Exhibit D. 23, "interest on bonds, interest on stocks, interest on loans." The first three items, the first item I understand is the proportionate amount of interest on the bonds that the company then held, is that correct? A Accrued interest to June 30th.

Dewi T. Evans, cross.

Q What do you mean by the item, "interest on stocks, $900"? A At that time, the date of the declaration of the dividends the corporation owned approximately $178,000, as I recall, of high grade, all dividend paying securities, and in my opinion that amount had accrued as dividends up to June 30th.

Q What do you mean, "had accrued as dividends"? A Dividends that the corporation would eventually receive as earnings, but had not received up to June 30th.

By the Court.

Q Had there been a declaration of those dividends by the respective corporations? A Only a portion of this amount mentioned.

Q How much? A I think $165.

By Mr. Conlon.

Q In other words of all the stocks that you then held the several corporations had declared dividends which were not yet paid and which amounted to $165? A I think that is the amount.

Q Have you that amount? A Yes, sir.

Q You know that is a proper item to go into the account, is it not? A Yes, sir.

Q Now, how is the balance made up between that $165 and that $900? A I used the phrase just a minute ago, "accrued dividends."

Q Is there any such thing as accrued dividends in any system of accounting you ever heard of?

Mr. Vickers: I object to the question of accountancy. This witness is not an accountant, and he has not been qualified

as an accountant, and is not called on under the law to act as an accountant.

The Court: His testimony was that dividends would be declared on information he furnished. He can be cross examined on that. If there is an item set up of accrued dividends, what we understand by that is dividends set up in an account, or set up as an asset.

Mr. Vickers: My objection is not to that line of inquiry; my objection is to the cross examination of counsel on this witness as an accountant.

The Court: I will sustain the objection to that question.

Mr. Conlon: Yesterday this witness was qualified as an expert.

Mr. Vickers: Not as an accountant.

Mr. Conlon: Yes, in the record he is.

The Court: I think I ruled that he was.

Mr. Vickers: Yes, as an expert as to the value of stocks.

Mr. Conlon: I did not so understand that.

The Court: I think the form of the question is objectionable, but I will permit this line of inquiry to be pursued as to the fact of the accrual of these dividends, whether or not they were accrued or paid, or whether they were immediately due and payable and as of what time.

Q Upon what basis did you credit earnings of the company, that difference of $165 and $900?
A The corporation owned securities, the market value, or cost value of $178,000, of which the

average yield would be about five per cent. per annum, per year, and pro-rating that over a period of weeks from May 15th, I think the date of the purchase of the securities, to June 30th, I think would approximate that amount.

By the Court.

Q Was there a declaration of these dividends by the various companies in which you had securities? A Only a portion of them.

Q Only a portion of them. As to the difference between $165 and $900, what do you say in reference to that? A These securities were all high grade—

Q I understand that. You said that twice. Had any dividends been paid representing that difference or had any dividends been declared and were they payable representing that difference? A I do not think they had been declared.

By Mr. Conlon.

Q You know they had not, don't you? A Without reference to memorandums I cannot tell what dividends had been declared and what had not been.

Q Had you referred to your records to find out how you made up that statement? A No.

Q Did you consider at that time that that was a proper credit? A In my own mind.

Mr. Vickers: I object. The question of proper credit does not mean anything. What does the witness understand by "credit"?

The Court: I do not know. I haven't seen the statement, but I assume it is set up as an asset of the corporation.

I will overrule the objection.

Q In your opinion was that properly set up as an earned asset? A On this memorandum, yes.

Q In your opinion that could properly be taken into consideration in awarding a dividend? A I considered myself that that would be an earning of the corporation as of June 30th.

Q Did you ever hear of that being done in any other case in your experience over years? A Not that I recall.

Q You know it had not been done in any case you ever had anything to do with, don't you? A Not that I ever had anything to do with.

Q Did you consult Mr. Johns as to the propriety of that credit? A I did not.

Q Now, you have "interest on loans, $300." That is what you averaged to be as accrued interest? A That the amount that the interest due the corporation as of June 30th on small loans outstanding would be $300.

Q That was your estimate? A Yes, sir.

By the Court.

Q What percentage of that had been actually paid as of the time of the declaration of the dividend? A I am unable to tell. I think the books show.

Q Approximately? A $41.53.

Q So far there were dividends declared of $165, you say? A To the best of my recollection.

Q There was $41 interest paid in to the company up to the 30th of June?

(Whereupon a short recess was taken.)

Dewi T. Evans, cross.

By Mr. Conlon.

Q You were an accountant in the Comptroller's office, weren't you, Mr. Evans? A No, sir; Chief Clerk.

Q That is the Comptroller of the State of New Jersey? A Yes.

Q From there you were assigned to the Attorney General's office? A Yes.

Q And your duty was the investigation of certain corporations in connection— A In connection with the work in the Attorney General's office.

Q And that went into the investigation of their financial condition? A Most of my work was in connection with representations made in stock selling.

Q But your investigation went into the financial condition of the companies, did it not? A In a great many instances, no.

Q In some instances yes? A Yes.

Q Now, again referring to Exhibit D. 23, I call your attention to the last series of items headed "Value of Rights," and then you listed the American Exchange, Irving Trust Company, $60, and three other stocks, totaling $657. What did you mean by that?

Mr. Vickers: I think you are wrong on that, aren't you? It seems to me it is $587, but I don't know.

Mr. Conlon: $657.

Mr. Vickers: On that memorandum. All right.

Q Now, wait a minute. $657. What did you mean by that, "Value of Rights"? A Under date of May 15th the corporation had purchased

a diversified list of securities. Between that date, May 15th and June 14th, the corporations mentioned had issued rights to subscribe to additional stock at prices lower than the usual market value. Those rights carry a cash value. According to the quotations as of June 13th and 14th, that was the value of those rights.

Q And you considered them then as earned income? A That that would be an earning of the corporation up to June 30th.

Q You considered them then as earned income? A I can't say that I did, no.

Q What did you consider it? A That the corporation had rights having a cash value for that amount.

Q What did you consider that? What kind of an asset of the corporation did you consider them? A What kind of an asset?

Q Was it earned income? A At the time if those rights were sold on June 14th it would be earned income.

Q Mr. Evans, if you will answer the question it will save a lot of time.

Mr. Vickers: That is answering the question.

The Court: No, it is not.

Q Did you on the 14th of June consider them as earned income? A No, I think not.

Q Why then did you include them in the statement that you presented to the Board of Directors showing the income of the company for that period about $4,100?

Objected to.

The Court: I will sustain the objection to the question in that form, Mr. Conlon.

Q Why did you put those figures in that statement? A In my mind the corporation had assets, had an asset, the asset in this particular instance being the gross value of these rights of $587.

Q Then this particular paper is not intended to show the earnings of the company? A In my opinion it is the estimated earnings of the corporation up to June 30th.

Q Will you answer the question? Did you intend this paper to show the earnings of the company, to the Board of Directors? A Yes.

Q And you included in there the value of these rights, is that right? A Yes, sir.

Q Did you include them as an earning? A Yes.

Q Are they as a matter of fact an earning of the corporation? A They are not an actual earning of the corporation until they are sold and the amount picked up on the books.

Q Then why did you include them in there as an earning? A In my opinion they are the estimated earnings of the corporation as of June 30th.

Q And when you presented this to the Board of Directors, you knew that that $657 was not an earning, did you not? A No.

Q Do you now contend that it was an earning as of June 14th? A I contend that those rights had a cash value.

Q Will you answer the question yes or no? Do you now contend that that was an earning of the company on June 14th? A Yes.

Q You do contend that that $657 was an earning of the company on the 14th of June? A There are so many various types of classifications.

Mr. Conlon: Your Honor, I am entitled to an answer yes or no.

The Court: Do you want to move to strike it out as not responsive?

Mr. Conlon: Yes.

The Court: It will be stricken out.

Answer the question.

The Witness: Will you repeat the question?

Q (Question read as follows: "Q You do contend that that $657 was an earning of the company on the 14th of June?") A In my opinion, yes.

Q Do you now say that it was an earning as of the 14th of June? A Yes.

Q Did you ever in all your experience with corporations ever find rights such as were present in this case credited to the earnings of the company? A Your question is not quite clear to me.

(The last question is read by the stenographer.)

A No.

Q Then as a matter of fact you did know on the 14th of June that it was not an earning in this case if it was not an earning in any other case, is that not a fact?

Mr. Vickers: I object to that, because that calls for a conclusion from the previous question, and is unwarranted.

The Court: I sustain the objection.

Q You say that in no other case you ever heard of did you know of rights being credited to

earnings as you credited them here, is that correct? A Yes.

Q Then why did you credit them here in this case as earnings? A This is not on the books of the corporation. This is a memorandum, my personal memorandum.

Q To present to the directors so that they might make up their minds whether or not to award a dividend, is that right? A Yes.

Q And you said before that you now contend and now know that the dividend of June 30th was paid out of earnings, is that right? A In my opinion, yes.

Q And in your opinion this $657 was part of these earnings? A I felt that that could be—

Q I do not care how you felt. In your consideration you refer to this $657 as part of the earnings? A Yes.

Q You are also taking in the difference between $900 and $165 on the what you call interest on stocks, as part of the earnings? A Yes.

Q And you never heard of either of these things being done before in any corporation you had anything to do with? A No.

Q I show you Exhibit D. 18. What is that? A This is a list of securities owned by the Universal Finance Corporation as of June 30, 1928.

Q Who made it up? A Haskins & Sells.

Q And it is correct? A To the best of my knowledge.

Q And that shows the cost price of these securities to the company? A Yes.

Q And it shows the market prices of the 30th of June? A Yes, sir.

Q Now, I call your attention to certain stocks that have after them a star under the cost, and

then down below that star, referring to this statement, "Includes the value of rights." Do you understand what that means? A Yes, sir.

Q That means as a matter of fact that the accountant added the value of these rights to the quotation price, the market value of the stocks as of June 30th, is that right? A Yes.

Q The market value of the stock as of June 30th took into consideration the value of these rights? A Right.

Q They are quoted that way on the stock market, aren't they? A Yes. I didn't see that statement until September 30th.

Q I didn't ask you that. Is it a fact that on the 30th day of June the corporation had owned securities for which it had paid $168,661.29? A Yes, sir.

Q Is it a fact that the securities had a market value on the 30th day of June $155,905.22? A Yes, sir.

Q So that between the purchase of these securities on the 15th of May and from that time on until the 30th of June there was a depreciation, a loss in value to the extent of between twelve to thirteen thousand dollars, is that right? A Yes, sir.

Q And did you know that there was such a loss, or loss to that extent, near that, on the 14th day of June? A I did not.

Q Did you try to find out?

Mr. Vickers: Just a minute. How could that possibly be, with the testimony in this case that stocks are fluctuating from hour to hour, how could a man on the 14th day of June find out what was the loss on the 30th of June?

Dewi T. Evans, cross.

Mr. Conlon: If he does not know, he can say so.

The Court: How could he know on the 14th what the marketability of these securities would be on the 30th of June?

Mr. Conlon: I did not ask him that. I asked him if he knew what the value was on the 14th.

Q (Question read.)

Mr. Vickers: How could the witness find out on the 14th day of June what it was on the 30th day of June? That there was such a loss.

The Court: It is not as of the 30th of June; it is as of the 14th of June.

Mr. Vickers: He speaks of the $13,000 loss.

The Court: That was of the 30th of June?

Mr. Conlon: Yes; now I ask him if he knew that there was a loss relative to that amount on the 14th day of June.

The Court: Was there a loss relative to $13,000 on the 14th day of June, and the witness said he did not know.

By Mr. Conlon.

Q You do not know? A My recollection is it was considerably lower than the $13,000 figure.

Q How much lower? A That I don't know.

Q You say "considerably." You must have some figure in mind? A My recollection is that the last two weeks of June that there was a severe crash in all security markets.

Dewi T. Evans, cross.

Q When you say it was considerably lower, what do you mean by "considerably"? A The larger part of the $13,000.

Q How much? A In my opinion it would be nine or ten thousand dollars.

By the Court.

Q Do you know what the loss was of the 14th day of June, between the acquisition cost and that day's market? A No, I did not check it.

(At one o'clock P. M. the Court takes a recess for one hour.)

AFTER RECESS.

DEWI T. EVANS, resumed the stand.

Cross examination (continued) by Mr. Conlon.

Q Do you now consider this item of $657 which is represented to be the value of the security rights as an earned asset of the company as of June 14th? A Yes, sir.

Q You do now then consider it so? A Yes, sir.

Q And also the $715 which was what you called interest on stock? A The item of $900.

Q $185 was for dividends declared? A Yes, sir.

Q I mean the difference, $715? A Yes, sir.

Q You consider that now an earned income? A Yes, sir.

Q You know that your accountants carried those rights in their market value of the secur-

ities, don't you? A I don't know that as of June 14th.

Q You know it now? A I knew that as of the last week in September.

Q And you know it now, of course? A Yes.

Q Still, that does not change your opinion on the question as to whether or not that was an earned income?

Mr. Vickers: I object on the ground that that was a presupposed agreement which is contrary to the facts. It is a confirmation of the witness' attitude.

The Court: Sustain the objection.

Q Did I understand you to say that you now consider that an earned income? A I said I knew the accountants, Haskins & Sells, included it in that statement of June 30th.

Q Did I understand you to say that you now believe the value of those rights to be an earned income? A Yes, sir.

Q You do know that you are not in accord with Haskins & Sells on that, don't you?

Mr. Vickers: I object.

The Court: Sustain the objection.

Q You do know that Haskins & Sells carried that as part of the security value, don't you? A Yes, sir.

Q That is not in accord with your opinion?

Mr. Vickers: I object on the ground that the question contains an unwarranted assumption of facts, and second, it is immaterial as to whether it is in accord at all with

the accounts, because there is nothing under the law or under the rule of morals obligating him to take into account what Haskins & Sells or anyone else thinks about it.

The Court: Unless he uses that statement as a basis for establishing his opinion, I do not think the question is material.

Mr. Conlon: He contends now that he hasn't changed his opinion as of June 14th.

The Court: That may be so, even if it is an erroneous opinion, the fact that Haskins & Sells have otherwise indicated where that should be carried makes no difference as far as this witness is concerned, unless he previously testified that he used their report as the basis for his opinion as to the income.

Mr. Vickers: It is contrary to the testimony.

The Court: Yes, and then he might be confronted with the statement.

Mr. Conlon: He now still persists that this is so, and if I can show that his accountant disagrees with him I can approach his reasoning.

Mr. Vickers: Suppose you asked him if you agree with him? It is no more competent than whether Haskins & Sells did.

The Court: Sustain the objection.

Q Did you know on June 14th that the value of your securities had depreciated? A Yes, sir.

Q Did you know how much? A I don't recall the amount.

Q Do you know how much? A No.

Q Did you try to find out? A I think not, not on June 14th.

Q Isn't it a fact that on June 14th, the day you declared this dividend, that your securities had decreased in value from their cost to the extent of $10,300? A I don't know that to be a fact.

Q In other words, what you did at this meeting was took credit for the stock or the rights as an an earned income, but you did not take into consideration in awarding this dividend that the stocks themselves had decreased in value five times as much as the rights were worth?

Mr. Vickers: That is objected to.

The Court: The limit of this witness' testimony is to the effect that he did not know to what extent the stocks had depreciated.

Mr. Conlon: I will withdraw the question.

Q You knew the stocks had depreciated in value, is that right? A Yes, sir.

Q You are quite sure they had depreciated in value to a greater amount than the value of these rights which was $657? A I think so.

Q In order to provide assets to award this dividend you took credit for the right and ignored the depreciation of the stock? A I didn't take into consideration the paper loss on these securities. The paper loss on securities is not taken until the securities are actually sold.

Q What were these rights, were they paper profits? A As of June 14th.

Q These rights were paper profits as of June 14th, isn't that right? A Yes, sir.

Q You took credit for your paper profits, but did not take into consideration your paper losses, isn't that right? A The reason for that—

Q I ask you if that was right. I didn't ask you your reason. A Yes, sir.

Q You knew that during this time there was being broadcast to the public that all of the details of your accounting were in the hands of Haskins & Sells? A I did not know that.

Q When did you find that out?

Mr. Vickers: That is objected to on the ground there is no such evidence in the case, that that was being broadcast.

Mr. Conlon: I will withdraw the question.

Q Did you know at that time that it was being represented to the public that Haskins & Sells were in charge of all the details of the accounting work of this company? A I knew that the phrase "Haskins & Sells" was included on certain printed matter issued by the Public Service Sales Company.

Q You had seen the printed matter, hadn't you? A Yes.

Q And you knew that on the 14th of June? A Yes.

Q In your statement did you figure any expense, any operating expense? A No, sir.

Q Why not? A It was my understanding as a director of the date of the declaration of the dividends, June 14th, all overhead expense would be borne by the Public Service Sales Company. The directors had that understanding with the Public Service Sales Company.

Q Do you now know whether or not the Universal Finance Corporation did pay any overhead expenses before the 30th of June? A I think not.

Q You think not? A That was my answer.

Q That was your understanding?

The Court: That was his answer, he said.

Q I show you a statement. What is that?

Mr. Vickers: Objected to; unless it is alleged to be a statement by the witness, I object to it. First, it is not proper cross examination, and second, there is no way that the defense can tell whether or not the witness is competent to answer, not having before it the statement in question.

The Court: This is an accounting statement of some kind, Mr. Conlon?

Mr. Conlon: This is a statement of Haskins & Sells accounting of the Universal Finance Corporation.

Mr. Vickers: As of what time?

Mr. Conlon: As of June 30, 1928.

Mr. Vickers: I do not object to that statement being made by the Prosecutor that that is what it is. Now, I object to the question on the ground that it is improper cross examination.

The Court: Sustain the objection.

Mr. Conlon: Your Honor, I contend it is obviously to show what knowledge this witness had of the situation.

The Court: Lay a foundation for it and I will let you.

Mr. Vickers: How can the Prosecutor say that when he knows that from the testimony there was no statement till the 26th or 27th day of September? It has been testified to repeatedly here, and is not contradicted.

Dewi T. Evans, cross.

Q When did you first see this statement, if you ever did see it before? A Either that day or shortly after.

Q And that date is September 27th, 1928? A Yes.

Q And I am correct in this, am I not? I want to get your answers correct, that so far as your knowledge goes at this time your understanding is that the Universal Finance Corporation paid no overhead up to the 30th of June. Is that what you said?

Mr. Vickers: I object on the ground that it is not within any allegation in this indictment that a representation made alleged to be false is false as of today. I think that would be consistent objection in connection with the other rulings by your Honor.

The Court: As a matter of fact, what difference does it make what his opinion may be of today?

Mr. Conlon: Your Honor, this is cross examination, and I am trying to find out what this witness knows about this thing.

The Court: I think you can find out as of the time that he made these representations. What the situation is today I do not think is material.

Mr. Conlon: I am going to cross examine him on it and try to see whether that thing is true.

Mr. Vickers: If counsel wants to do that and open the door and will not foreclose the defense, I will withdraw my objection.

The Court: If he opens the door I will keep it open. I will sustain the objection.

Dewi T. Evans, cross.

Q Did you in the month of September see a statement from Haskins & Sells which set forth in detail the overhead paid by the Universal Finance Corporation up to the 30th of June?

Mr. Vickers: That is objected to, on the ground that the question involves the contents of a paper not in evidence and a paper on which the witness was neither examined nor permitted to be examined on his direct examination.

The Court: What difference does it make as bearing on any of the conclusions that he may have reached as of the 14th of June?

Mr. Conlon: I don't know, your Honor. If I show it is true as of September, I am going to cross examine on the early dates.

The Court: Suppose he did see it? What materiality can it have with reference to any statement that he may have made which he says is an opinion?

Mr. Conlon: I do not want to argue this thing too completely in the presence of the jury until your Honor allows the question, but my further cross examination will be that this statement was made up from the books of the Universal Finance Corporation, which were in this man's custody and control.

The Court: I will sustain the objection.

Q Mr. Evans, do you now have available to you the statement of Haskins & Sells, showing the profit and loss for the periods ending June 30th, September 30th and December 31st? A I think not.

Q Have you any of them? A I think I can procure them.

Mr. Vickers: We have them if you want them. There is no quibble about that.

Q Have you any of them? A I think I have the June 30th statement.

Q Have you the September 30th statement? A Haskins & Sells did not certify the September 30th statement.

Q Have you an October 30th statement? A I think so.

Q Can you tell me whether or not the income of the Universal Finance Corporation from the loan business up to the 30th of June was more or less than the operating cost?

Mr. Vickers: The question is objected to on the ground that the question assumes the unwarranted fact that there was an operating expense. That was contrary to the testimony in the case.

The Court: Has it been established, the fact that an operating expense up to the time of the 14th of June, Mr. Conlon? This witness has testified that there was an agreement between the Public Service Sales Company and the Public Service loan to bear the operating expenses up to a certain period.

Mr. Conlon: I withdraw the question.

Q What was the gross income of the Universal Finance Corporation up to the 30th of June, from the small loan business? A Cash income?

Q Cash income? A $41.53.

Q Do you know whether or not the income from the small loan business for the three months' period ending September 30th was more or less than the operating expenses? A Less.

Q It was less than the operating expenses? A Yes, sir.

Q That is for the period up to September 30th? A Yes, sir.

Q So, for the six months ending September 30th— A Three months.

Q For the six months ending September 30th there was no income from the small loan business which could have applied to this ten per cent. dividend, is that correct?

Mr. Vickers: I want to make an objection. I think Mr. Conlon will accept the amendment. There wasn't any six months' period.

Mr. Conlon: From the beginning of the company till September 30th there were no earnings from the small loan business to apply to this ten per cent. dividend.

The Witness: From the small loan business?

Q In other words, when you left the small loan business you had not begun to make the ten per cent.? A I didn't get the question.

Q (Question read.) Confining your thought of the small loan business in part to ten per cent. had been made by the company? A Not as earnings from the small loan business.

Q Now, during that period—

Mr. Vickers: There never was ten per cent. during that time.

Q I mean at the rate of ten per cent. a year, when I say ten per cent. You understand that, don't you? A Yes, sir.

Q I mean a year. A Yes, sir.

Q From the small loan business. It was no part of that ten per cent.? A No.

Q Now, during that period you had invested in stocks about $150,000 or $160,000, is that correct? A That's true.

Q And what was the average income on that stock? A I estimated it in June at five per cent.?

Q You estimated it in June to be five per cent.? A Yes, sir.

Q You could figure it out exactly to the penny, couldn't your? A I think I did at that time. It is my recollection that it was five per cent.

Q Did you figure it to five per cent.? A That is my recollection.

Q Some of the stocks that you held did not pay any dividends? A To the best of my knowledge any securities I had purchased or recommended the purchase of for the Universal Finance Company was a dividend paying security.

Q What about the American Super Power Company? A I didn't buy that.

Q Did that pay a dividend? A It paid some dividends.

Q Did it pay a dividend?

Mr. Vickers: Isn't that a dividend?

The Court: Cash or stock?

Q Did it pay a cash dividend? A No.

Q So there were some stocks you had that did not pay cash dividends? A One stock.

Q That is the American Super Power Company? A Yes, sir.

Q What about the National Supply Company? A It is my recollection that they were all dividend paying stocks.

Q Then your average was five per cent., you say? A Yes, sir.

Q Wasn't it nearer four per cent.? A That is not my recollection.

Q As a matter of fact, wasn't it less than four per cent.? A Not to my best knowledge.

Q Your best knowledge is five per cent.? A Yes, sir.

Q Your investment in the market at that time was on the average of $160,000? A I think it was $170,000.

Q On that you were getting that rate of five per cent. a year? A Yes, sir.

Q What is the greatest amount of cash you had in the bank during that period? A I don't know.

Q Can you find out for me readily? A From the check books.

Q As a matter of fact you carried, there was an average there of about $40,000 in cash, wasn't there? A At one time it is my recollection that we had over $100,000 in the bank.

Q Then you bought some stock? A Yes, sir.

Q As an average it was about $40,000? A I think it was higher than that.

Q How much would you say? A I would say nearer $75,000.

Q All right, $75,000. That paid what interest? A Bank interest.

Q Yes. A Two per cent.

Q Now, see if I am correct in this so far. The loan business, no net income. $178,000

worth of stock securities on an average of five per cent. a year, is that right? A Yes, sir.

Q $75,000 cash in the bank at two per cent. a year, is that correct? A Yes, sir.

Q You owed the bank $80,000? A Yes sir.

Q You pledged in the bank for that $80,000 some of these securities? A A portion of them.

Q With that $80,000 you bought other securities? A Yes, sir.

Q You paid the bank how much interest on that $80,000? A Six per cent.

Q So, you were paying the bank six per cent. on $80,000 when they were paying you two per cent. on $75,000, is that correct? A No, it is my recollection that $75,000 was used to purchase securities with.

Q You said that was the balance you had in the bank. A If that stayed in the bank over a period of time it would draw two per cent.

Q I asked you for the average cash balance in the bank during a period. A What period?

Q From the beginning of the company until September 30th. A Then. I think your figure would be nearer correct, the average balance.

Q $40,000? A Yes.

Q I think so too. A Yes.

Q So, you were paying the bank six per cent. on $80,000, which was $4,800 a year at that rate? A Yes, sir.

Q And they were paying you two per cent. on $40,000? A Yes, sir.

Q Which was $800, is that right? A Yes sir.

Q So, you were paying the bank at the rate of $4,000 or more in interest than they were paying you, is that correct? A Yes, sir.

Q So now we have this situation. Correct me if I am wrong. From the loan business no net in-

come. Your interest in the bank account you had at the rate of $4,000 a year. Your income from your stock securities five per cent. a year. What other assets did you have? A As of?

Q During this period. A $178,000 in securities.

Q Yes, we have that. A The bank balance?

Q We have that. A And outstanding loan balance.

Q We have that. So, during this period up to September 30th the income of the Universal Finance Corporation consisted of this five per cent. income on the security holdings out of which had to be paid at the rate of $4,000 a year interest to the bank, is that correct? A Yes, sir.

Q That situation was all familiar to you at the time between the 1st of June and the 30th of September, wasn't it? A Yes, sir.

Q I mean that there was nothing I have asked you that did not occur to you before? A No.

Q At the rate of ten per cent.—

Mr. Conlon: Strike that out. There is something else I want to take up.

Mr. Vickers: Do you abandon the question?

Mr. Conlon: Yes.

Q Was any dividend paid on the common stock of the Universal Finance Corporation? A No.

Q Was it ever discussed? A Yes.

Q When? A Various times between July and December.

Q Was it discussed in June? A The probabilities of the declaration of a dividend?

Q Yes. A I think it was.

Q Is there anything in the minutes about that? A No.

Q Why is it the dividends were paid on the common stock? A The Board of Directors, in my opinion, agreed amongst themselves to waive all dividends.

Q That was a sort of a magnanimous gift to the corporation? A No, from the angle of being a stockholder of the Universal Finance Corporation I was perfectly willing to wait for several years until the company was a going prosperous concern.

Q You confess that was six per cent. stock? A Yes, sir.

Q You paid a dividend on it at the rate of ten per cent. a year? A Ten per cent. on par.

Q That meant that that four per cent. came out of the net earnings over the six per cent. that was participated in the fifty per cent. of net earnings? A Yes.

Q Is that correct? Did the company at that time make the fourteen per cent. so that there was four per cent. to be applied to the common stock? A Did it make it?

Q Yes. A No.

Q So when you gave the extra four per cent. to the preferred stockholders, that was more than fifty per cent. of the participating profits, wasn't it? A Yes.

Q So in your calculations you are not shooting—I am not aiming at the fourteen per cent. I will refer to the ten per cent. and now go back. That is what you were trying to make, ten per cent., is that right? A Yes.

Q Not fourteen per cent. Your loan business, no net income; your bank balance on your loans in the bank, $4,000 due from you; your income

from your securities, five per cent. How did you expect, why did you think at that time that you were making at the rate of ten per cent. a year? How did you expect to make at the rate of ten per cent. a year? A The bank loan was only for a limited length of time. Those securities would be held for an indefinite length of time as an investment. Does that answer the question?

Q No, it does not even begin to. A The loan business was increasing each month, in my opinion twice as fast as the average loan company. I have had some experience with a number of them. I made an investigation of a number of them, and this corporation at that time was putting out money in small loans about twice as fast as the average new company due to its very favorable location at Broad and Market streets.

Q Any other reason? A The corporation had other profits from the sale of securities during the month of September.

Q Any other reason? A Not that I recall.

Q All right. Let us take them up. You say the loan business had prospects. You mean that the loan business you hoped would make that money, is that right? A It increased from June until September.

Q And you had hopes for its future? A Yes.

Q Let us forget its future and think about its then present, September 30th.

Mr. Vickers: I object to forgetting the future.

Mr. Conlon: This is cross examination.

Mr. Vickers: I am entitled to my objection to the question of the Prosecutor and

I object to the Prosecutor indicating to the witness that he must forget the future.

The Court: He may be permitted not to forget the future with reference to the market value of the stock, with reference to the market value. He must forget the future with reference to present income production.

Mr. Vickers: I do not object to that.

Mr. Conlon: May I reframe the question?

The Court: You may.

Q Eliminate from your considerations the future of the stock and in figuring your dividends you could not consider the loan business at all, could you, because it had had no net earnings? A That is true.

Q Now, what I want to know, is how you figure that this business was making at the rate of ten per cent.? A Taking into consideration all of the income of the corporation, in my opinion it was earning—

Q What do you mean by all of the income? A The gross income of the corporation.

Q Haven't I mentioned all the items that go to make up the gross income? A I do not think you mentioned any profit taken from the sale of securities.

Q All right. Let us take that up, but before we take up the profits from the sale of securities, the situation was that up to the 30th of September this company neither did nor was it possible in the manner in which it was doing business to show a profit of ten per cent., eliminating what profit was made on the sale of securities? Isn't that correct?

Mr. Vickers: Objected to on the ground that the law does not permit directors to eliminate things any more than it permits them to include things which are non-existent, and the witness could not be called upon to discuss academically something which did not exist. There was a profit on the sale of stock, and that was a net profit to the company.

The Court: You mean security profit?

Mr. Vickers: Security profits.

(The last question is read by the stenographer.)

Mr. Vickers: That is purely academic.

Mr. Conlon: There is nothing academic about it. It is a situation of the company, your Honor.

Mr. Vickers: No, it is not a situation of the company, because you are eliminating something.

Mr. Conlon: I am going to put that in too, but not in this question.

Mr. Vickers: I object to the question.

The Court: I overrule the objection.

Defendants' counsel prays an exception to this ruling of the Court.

Exception allowed; let it be signed, and it is signed and sealed accordingly.

DANIEL J. BRENNAN,
Judge.

Q (Question read as follows): "Q The situation was that up to the 30th of September neither did nor was it possible in the manner in which it was doing business to show a profit of

ten per cent. eliminating what profit was made on the sale of securities? Isn't that correct?'') A Yes.

Q So you depended during the entire period up to September 30th for the profits you made on your stock sales to pay dividends, is that correct? A As part of the gross income of the corporation.

Mr. Conlon: Will you read the question, and answer it yes or no?

Mr. Vickers: I object to the witness being directed to answer a question yes or no.

The Court: He can answer that yes or no. If it is not correct he can say no. He can add such explanatory comment as may be necessary.

Mr. Vickers: If you include that he may add an explanatory comment, I of course have no objection.

A I don't think that is correct, when the declaration of dividends was made the gross income of the corporation was included. It is impossible to segregate any portion of the income of the corporation.

Q I have told you the items that made up the gross income, haven't I? A Yes.

Q You have eliminated the loan business as to any net income, is that right? A Yes.

Q And you have eliminated your bank except that you owe it at the rate of $4,000 a year? A If the loan lasts a year.

Q And your income on your stocks was only five per cent.? A Yes.

Q So isn't it a fact that the only thing during the period up to December 30th that you

could depend upon to pay dividends at the rate of ten per cent. a year, was such profits as you might make on stock sales?

Mr. Vickers: How can that be a competent way of committing a witness who under the law has not only certain rights but certain duties to perform? You eliminate something which does not bring a net profit but which must go into the testimony. I do not care whether it is four dollars or whether it is four cents. Then you eliminate something else because something else is greater, and yet each item goes into the assets.

The Court: Why can he not be asked what the sources of the income were?

Mr. Vickers: He has stated in figures. He has given in figures, dollars and cents here on the witness stand.

The Court: He has as of the 14th of June.

Mr. Vickers: He has as to all the others.

The Court: I do not know whether he has as to September or not.

Mr. Vickers: September likewise.

The Court: Why can he not be cross examined on the items that go to make up that statement?

Mr. Conlon: Will your Honor listen to my question and see if it is not a proper question?

(The last question is read by the stenographer.)

The Court: Objection overruled.

Defendants' counsel prays an exception to this ruling of the Court.

Exception allowed; let it be signed, and it is signed and sealed accordingly.

DANIEL J. BRENNAN,
Judge.

Q (Read by stenographer) So isn't it a fact that the only thing during the period up to September 30th that you could depend upon to pay dividends at the rate of ten per cent. a year was such profits as you might make on stock sales? A The larger part of the dividends up to September 30th came from the profits on the sale of securities.

Mr. Conlon: Will you read the question again to him, Mr. Stenographer?

(The last question is read by the stenographer.)

The Witness: I answered the question.

The Court: No, you did not. The question is whether it is not the fact that the only thing you could depend on was your security profits from which to pay dividends. The answer that the larger part of it was security profits is not an answer to the question.

The Witness: I will answer yes.

By Mr. Conlon.

Q Did you or any of the men who were in this enterprise with you, either the Financial Investment Company or the Universal Finance Corporation, ever disseminate among the public the knowledge that the income or the substantial part of the income on the Universal Finance Corporation was received through its stock investments and not on its small loan business?

Objected to.

Objection sustained.

The Court: I understand the gravamen of the indictment is—Well, there is no legal obligation on him to disseminate that. What they are charged with is the dissemination of something else that is not the fact, according to the State's representation.

Q Isn't it a fact that after the dividend of June 30th had been paid and before the dividend of September 30th had been paid that you found out that the dividend of June 30th had not been paid out of earnings? A I think not.

Q I show you a report of Haskins & Sells dated September 27th, and I ask you if you saw that before September 30th? A The report is dated September 27th. The date I saw it I cannot tell.

Q You said before that you believed you saw it a day or two after? A Yes, sir.

Q A day or two after that would be September 28th or 29th, is that right? A Yes, sir.

Q And in that report it shows for the period ending June 30th an increase—

Mr. Vickers: I object to counsel reading from the report.

The Court: Objection sustained.

Mr. Conlon: I ask to have this report marked for identification.

(Same is marked S. 22 for identification.)

Q Do you remember the details of this report? A I think so.

Dewi T. Evans, cross.

Q Can you give me those details without referring to it?

Mr. Vickers: I object on the ground that this is incompetent and calls for a document not in evidence and on which he was not examined in chief.

The Court: Sustain the objection.

Q Did you learn from Haskins & Sells on September 27th or a day or two after that, that there was an operating loss for the period ending June 30th?

Mr. Vickers: I object on the ground any information from Haskins & Sells is not part of the direct examination so far as the report is concerned and is incompetent.

The Court: Objection overruled.

Defendants' counsel prays an exception to this ruling of the Court.

Exception allowed; let it be signed, and it is signed and sealed accordingly.

DANIEL J. BRENNAN,
Judge.

Q Did you find out from Haskins & Sells on September 27, 1928, or a day or two after that, that the dividend of $1,208.75 which was paid as of June 30th had been paid out of surplus and not out of earnings?

Mr. Vickers: I object to that as manifestly an unfair method of examination, endeavoring to get into evidence what the Court has repeatedly ruled out.

The Court: Sustain the objection.

Q Where did you find out from Haskins & Sells as to the reserve of dividends on June 30th, 1928?

Mr. Vickers: I object on the same ground, and it is not proper cross examination.

The Court: Sustain the objection.

Mr. Conlon: I am afraid I cannot frame the question.

The Court: Not to make it admissible. That is no part of the examination in chief.

Mr. Conlon: Under the case of State *vs.* Glover I am allowed to ask this witness anything I wish, whether it was part of the direct examination or not.

The Court: I do not quarrel with the law in that case.

Mr. Conlon: May I submit that it is relevant to this issue, of this defendant, whether or not he knew the source of his own dividends before the dividend was paid.

The Court: If it can be established by competent evidence, but it cannot be brought out on cross examination, or this cross examination, in my legal judgment. The fact that all these things were brought home the State may have an opportunity to prove by the proper witnesses, but I do not think this cross examination by the State is proper.

Mr. Conlon: I am trying to cross examine this witness as to what was in his mind.

The Court: He hasn't said at any stage of his testimony that he used the accountant's report as a basis for any information he formed or conclusions he drew.

Mr. Conlon: I haven't asked him about the report.

The Court: That is the very reason why he cannot be examined on this in my judgment.

Mr. Conlon: I asked him if he heard from Haskins & Sells.

The Court: How would that be known?

Mr. Conlon: It would immediately put him—

The Court: It might or it might not. He hasn't testified he used that as a basis for his figures, whatever they may have been. If he had said that he used that as a basis for his figures he drew then on cross examination it would be competent to discredit him.

Mr. Conlon: He does say he now contends are paid out of earnings.

The Court: He still contends they were paid out of earnings, as I understand earnings, but whether or not that is a correct understanding, it might be a matter for the charge.

(Argument.)

The Court: I do not think this is proper cross examination.

Q Did you state yesterday that in May, 1928, the corporation had about $150,000 in the bank from which these securities were bought? A I remember saying that.

Q Did you say that you invested this money in these securities because it would take possibly a year to a year and a half to put that amount out in small loans? A If I said $150,000, it would take a year or a year and a half to put that amount out in small loans.

Q Did you say $150,000?

Mr. Vickers: That is what he said, as in the record.

Q I am asking you. A I don't remember using that amount, no.

Q Would it refresh your recollection if I read your answer, page 393-H, "Q Will you give to the Court and jury the reasons of yourself and the Board of Directors of the Universal Finance Corporation for making these investments as they were made? A The bulk of those securities were purchased on or about May 15, 1928. At that time we had, I think, in the neighborhood of $150,000 in the bank. From my knowledge of other loan companies it would take possibly a year or a year and a half to put that $150,000 out in small loans."

Q Did you say that? A Yes, sir.

Q Was that a fact? A That was my understanding.

Q Then, if it would take a year or a year and a half to put out the capital you then had on hand in the small loan business, why was it that in the month of June you proceeded to sell some more stock?

Mr. Vickers: I object, because if there was a rejectment and a refusal to accept any subscriptions of stock and there wasn't any more sold than that purchase of 2,000 shares were sold in the late summer—

The Court: When was the 10,000 shares sold?

Mr. Vickers: In September. It was not paid for until January.

Dewi T. Evans, cross.

Mr. Conlon: Withdraw that question.

Q Was any stock sold between June and September? A Very little.

Q I say was any stock sold between June and September? A Yes.

Q Why did you proceed to sell stock from June to September and after September, after in May, if in May you had enough cash on hand to take care of the loan business for a year and a half?

Mr. Vickers: That is objected to on the ground that neither this witness nor his company sold stock.

The Court: You object to the form of the question?

Mr. Vickers: Yes.

The Court: There is no question that 10,000 shares of stock were sold?

Mr. Vickers: No.

The Court: Reframe the question, Mr. Conlon, and I will allow it.

Q (Question read.) Withdraw the—with the Universal Finance Corporation and proceed with the rest of the answer.

Mr. Vickers: I object, on the ground that the Universal Finance Corporation did not sell stock.

By the Court.

Q What was the reason for the public offering of stock of the Universal Finance Corporation to the extent of 10,000 shares in September? A

The Board of Directors had planned upon an additional branch office and also to acquire other going small loan companies.

Q After they decided to do that there was an issue of how many shares put out for sale? A I think it was twenty thousand.

Q Twenty thousand? A I think—I am speaking now of the third contract. Is that what you mean?

Q How much is the first contract? A 25,000.

Q How much was the second contract? A 10,000.

Q How much was the third contract? A 20,000.

Q How much was the fourth contract? A 20,000.

Q That was the reason why the second, third and fourth issues were sold? A Yes, sir.

Q Because they were going to open branch offices? A Yes, sir.

(A brief recess was taken.)

Q Do you know what an investment trust is? A Yes, sir.

Q What is an investment trust? A By the term "investment trust" today means a corporation that uses out of assets or out of its cash available to purchase a diversified list of securities, that in my opinion is the most scientific manner of investment.

Q In other words, it is a corporation which takes the stockholders' money and buys and sells stocks, investments? A Yes, a diversified list of securities.

Q As a matter of fact that is what this company was doing, wasn't it? A In a small way.

Q Well, in a way to the extent of more than one-half of its cash assets? A As of June 30th.

Q Did you ever give any information to the public in connection with the sale of this stock or ever cause such information to be given to the public that part of the assets of this company were being used in the operation of an investment trust? A I had mentioned to a number of stockholders and shown them the list of securities owned by the corporation.

Q Was anything said in the broadcasting about it? A Not so far as I know.

Q Was anything said in the literature about it? A I think it was included in some of the literature.

(A brief recess was taken.)

Q Mr. Evans, is it or is it not a fact that the Universal Finance Corporation operated up to June 30, 1928, at a loss? A I think not.

Q What information have you on that subject? A The records show—

Q What records? A The reports of the corporation.

Q Where are they? A I have reference to a balance sheet prepared by our accountants.

Q Where is it? A In the office records.

Q Where is it? A In the office records.

Q Where is that report now? A I think they are in the copy in the office files, in the office records.

Q You mean you haven't got it here? A I have a copy of it.

Q Have you got it with you? A Yes, sir.

Q Will you let me see it?

Mr. Vickers: I object to it on the same grounds as urged heretofore.

The Court: I sustain the objection at this time.

Mr. Conlon: Your Honor, this witness testified to receipts and disbursements for these different months.

The Court: He may be further cross examined.

Q Can you tell me the details of that statement? A I don't remember the details of the statement.

Mr. Vickers: If it is not his statement I will interpose an objection, if it was not his statement, if it was not taken into account and did not exist.

The Court: He has used his accountant's statement as a basis for his statement that it was not a loan. Now I think he may be further cross examined on that line.

Mr. Vickers: I object to the contents of the statement.

Q Were there any securities sold up to June 30th? A No, sir.

Q You say that there was a profit as of June 30th? A Have you reference to the statement that I mentioned?

Q I have not reference to anything. A I think there was a profit as of June 30th.

Q Upon what do you base your thought? A Upon the memorandum as shown to the Board of Directors as of June 14th, near the date of the declaration of the dividends.

Q You mean to say that you base your thought on your memorandum that was made on June 14th? Is that what you mean? A Did you say June 30th?

Q June 14th. A It is my opinion that there was a profit as of June 30th.

Q Upon what is your opinion based? A Upon my knowledge of the accounts of the Universal Finance Corporation.

Q Tell us the knowledge you have of those accounts. A What is the knowledge?

Q Yes. Let us know what you know about it. A I think that the Universal Finance Corporation had a profit as of June 30th.

Q Why do you think so? A Because of the fact that all operating expenses up to June 30th had been paid by the Public Service Sales Company.

Q Don't you know as a matter of fact that that was not true? A With the exception of organization expenses, which are treated as deferred charges.

Q Don't you know as a matter of fact that the Universal Finance Corporation did pay overhead expenses up to June 30th? A The overhead expenses that were paid by the Universal Finance Corporation up to June 30th are organization expenses and were treated as deferred charges.

Q I didn't ask you what they were treated as. I asked you whether you know that the Universal Finance Corporation did pay overhead expenses to the period ending June 30th? A No, I think not.

Q You think not. Is that your answer? A Yes.

Q You had access to these books up until December 27th, did you? A Yes, sir.

Q Since when after that did you access to them? A I think the last of February.

Q The last of February, and since the last of February up to the present time you have had access to them? A Yes, sir.

Q And that is your best thought? A Yes, sir.

Q All right. Now, tell us what else you know about this statement as of June 30th about the financial conditions as of June 30th? The same has operated at a profit. How much? Where did the profit come from? Tell us what you know about it. A The assets of the Universal Finance Corporation as of June 30th consisted of approximately $178,000 in securities, in cash there may have been in the bank, the amount of outstanding loans, notes receivable, amounts due from the Public Service Sales Company, and the outstanding liabilities were any unpaid accounts as of June 30th, commissions due to brokers, the outstanding stock liabilities and the surplus account.

Q Are you finished? A Yes.

Q Is that your answer to my question? A Yes.

Q You agreed with me a little while ago, Mr. Evans, that outside of the profits made on sales of stocks, this company did not earn at the rate of ten per cent. with which to pay dividends, is that right? A Yes.

Q Up to June 30th there were no stocks sold, were there? A Securities?

Q Securities sold. A Not securities owned by the corporation.

Q Where did your profit at the rate of ten per cent. come from up to June 30th, then? A I have explained that in that memorandum.

Q And that is your only explanation in that memorandum that you made on the 14th of June, is that correct? A Yes.

Q Can't you give me any more detailed explanation from the books or from statements that you made from the books at that time?

Mr. Vickers: That is objected to, because the dividend declaration as of the 14th of June.

(The last question is read by the stenographer.)

The Court: In other words, you want the statements made from the books since that time should explain the profit as of June 14th, is that right?

Mr. Conlon: Yes.

The Court: I will permit it.

Q Can't you do that? A July 1st—do you want me to show the amount of cash received?

Q I want to know whether you have data available to show it to us. We have not time to go through the books. I want to know whether you have available to show us the profit and loss up to June 30th and up to September 30th.

Mr. Vickers: I object to the statement of the Prosecutor, we haven't time to go through the books. We have from now on for the defense.

Mr. Conlon: I am not going to take the time.

Dewi T. Evans, cross.

The Court: The question is whether he has in the books or other available data additional information from which he made up a statement of profits and loss as of June 14th.

Mr. Conlon: June and September.

A I can read the figures from the books.

Q Have you any data that will show that?

The Court: He said by the books.

Q By the books? A I have by other memorandums.

Q Where are they? A I have them with me.

Q Let me see them.

Mr. Vickers: I object.

The Court: Sustain the objection.

Q As I understand it you now say these dividends in these two periods, June 30th and September 30th, were paid out of profits? A Surplus and out of profits.

Q Out of earnings? A Yes, sir.

Q You do not choose to produce any data that will allow us to see where those earnings came from?

Mr. Vickers: I object to the question as highly improper, in view of the ruling of the Court. It is not a question of what he chooses.

The Court: Sustain the objection.

Q Do you know whether or not the company operated at a loss for the month of September?

A It is my recollection that the company operated at a profit for the month of September.

Q Of how much? A I think around $3,000.

Q That is your best recollection? A I think that was the amount.

Q Have you any data that will show that? A I have my own memorandum.

Q Produce it.

Mr. Vickers: I make the same objection.

The Court: The same ruling.

Q Do you know whether or not the company operated at a loss for the month of October? A It is my recollection the company operated at a loss in October.

Q Of how much? A I think, from the best of my memory, $800.

Q Is that your best recollection? A Yes, sir.

Q Have you any data to show that? A I have my own memoranda.

Q Produce it.

Mr. Vickers: I object.

The Court: Sustain the objection.

Q Do you know whether or not the company operated at a loss for the four months ending October 31st, 1928? A I think the company operated at a profit for the four months ending October 31, 1928.

Q Of how much? A I think about $1,800.

Q I show you a paper. Did you ever see that before (indicating)? A Yes, sir.

Q What is it? A A statement of income of profit and loss for the month of October, 1928, and the four months ending October 31, 1928.

Q Who prepared that? A This was prepared by a bookkeeper in the office of the Universal Finance Corporation.

Q Your employe? A Yes, sir.

Q At your direction? A No.

Q Did you see it after it was prepared? A Yes, sir.

Q Is it correct?

Mr. Vickers: Objected to on the ground it calls for the contents of a statement which the witness did not make up and which is not binding on him so far as anything shown here is concerned.

The Court: Sustain the objection.

Q Does this paper show a record of the profit and loss account of the Universal Finance Company for the months of September and October and for the four months ending October 31st? Does it show that correctly?

Mr. Vickers: That is objected to on the ground that the question relates to the contents of a paper not in evidence and is incompetent.

The Court: Sustain the objection.

Q This was prepared in the office of the Universal Finance Corporation? A Did this come from my desk?

Q I don't know where it came from. A That is my recollection.

Q It is one of your records in the office of the Universal Finance Company that was taken by the Prosecutor's Office? A I think so.

Q From your desk? A I think so.

Q It was prepared by some clerk in the office for your use? A Yes, sir.

Mr. Conlon: I ask to have this statement marked for identification.

(Same is marked S. 23 for identification.)

Q For what purpose was it prepared?

Mr. Vickers: Objected to on the ground that it relates to a paper not in evidence and not the subject of direct examination, therefore not proper cross examination.

The Court: Sustain the objection.

Mr. Conlon: For my future guidance may I ask whether the ground of the objection is that it is not the subject of cross examination?

The Court: That is sufficient ground for its exclusion at this time.

Mr. Conlon: This witness is a defendant in this case and if he takes the stand I am allowed to ask him anything relevant to the issue.

The Court: That is true.

Mr. Conlon: Whether it is testified to on direct examination or not.

The Court: Unless he attempts to justify his conclusion by some statement to which he has referred to enable it to be identified I won't permit him to be examined on it. The fact of making any such statement, proof of the existence of that statement although

may go into evidence and what discrepancies, if any, it contains of what is or is not a fact of what the witness testified to, but unless he uses it as the basis of his testimony I do not think it is proper cross examination.

Q Is this a copy of one of the statements you said you referred to when you gave us the figures as to profits and losses (indicating)? A To the best of my knowledge it is.

Mr. Conlon: I submit I should be allowed to use it.

The Court: Put it in evidence.

Mr. Conlon: I will offer it on my case.

Q Isn't it a fact that this statement shows that there was a loss, an operating loss for the period of four months, July, August, September and October, of $2,155.69?

Mr. Vickers: I think this is highly immaterial for the Prosecutor to persist in putting questions to this witness which have been ruled out by your Honor. This is not in evidence and the witness should not be permitted to be jeopardized by the Prosecutor.

The Court: Sustain the objection.

Mr. Conlon: Wasn't that my understanding of your ruling, your Honor?

The Court: What I said was, you may have misunderstood me, that the witness may be cross examined on any papers which he on his direct examination says he used as a basis for arriving at his conclusion during any of these dividend periods; his con-

clusion that a dividend was payable from earnings or earnings and surplus, whatever he describes them as, the source or the fund from which the dividends were paid, but he cannot on cross examination be confronted with a paper nor can it be admitted on cross examination that he used that statement.

Q You broadcast, did you? A I broadcast, as I recall, two or three evenings, because of Mr. Edwards' illness. It was not part of my work.

Q What name did you use? A Mr. Allen.

Q Mr. Allen, and you were introduced by the announcer? A I think so.

Q You know so, don't you? A Truthfully I don't remember whether he introduced me that night or not.

Q And when you broadcast you didn't tell the radio audience that you were the treasurer of the company whose stock you were offering for sale? A I did not.

Q The letter that you wrote to Hollenbaugh, Exhibit S. 10 on the letterhead of the Attorney General, did you dictate that letter or write it yourself? A I wrote that letter.

Q Did you dictate it to a stenographer or did you write it yourself? A No, I wrote it.

Q You wrote it on the typewriter? A Yes, sir.

Q You did not dictate it to a stenographer? A What is the date of the letter?

Q March 29, 1928. A No, I wrote the letter.

Q You typed it out yourself on the typewriter? A Yes, sir.

Q What do the letters in the left, lower left-hand corner, DTE-H mean? A At my office in

Trenton I spent a number of evenings down there. There is no stenographer there and when I go to the office in the evening I sit down at the typewriter and write my own letters, and when I write my own letters direct to the typewriter, I put that notation.

Q And that notation—what does the "H" mean? A It means myself in my own mind.

Q "DTE-H"—that means D. T. Evans himself? A In my own mind.

Q You know as a matter of fact, don't you, that it is customary and universal, at least in this part of the country, for that notation to be made by the stenographer and for the stenographer's initial to be there after the dash, don't you?

Objected to as not the practice.

(Counsel argue.)

The Court: Mr. Conlon's question was directed towards this witness' knowledge of what he says is a very general custom here that the stenographer, as we call them, in our offices, places her initial after the initials of the person dictating. Now, if he knows that he can testify to it.

Q Is that a fact? A I think that is a commonly accepted thing, yes.

Q In other words, ordinarily anybody looking at this paper would figure the "H" was the initial of the typist? A I have been using that for ten years.

Q Ordinarily anybody looking at this paper would figure the "H" was the initial of the typist, wouldn't they? A The average person would.

Q And you said you wrote this in Trenton? A No. My explanation was that because of the fact that I am in Newark so much—

Q Oh, that has not anything to do with it. Where did you write the letter? A As I recall, in the office of the Attorney General.

Q In Newark? A Yes.

Q During the day or at night? A I think it was at noon time.

Q Was there any stenographer in the office? A I think not.

Q Why didn't you wait until a stenographer came in to dictate the letter in the usual course? A That I can't answer.

Q You had stenographers there for that purpose? A One girl in the office.

Q And you were in the habit of dictating your correspondence to her? A Usually.

Q You did not typewrite the letters that went out of that office, did you? A I think occasionally I sat down.

Q How many typewriters did you have there? A One typewriter.

Q One typewriter and one girl, is that right? A Yes.

Q How many carbons did you make of this letter? A I don't remember. I think one.

Q You think one? A That is the best of my memory.

Q Who put the carbon copy of that letter, if anybody, if you know, in the steel box in the drawer of your desk? A I don't know.

Q You don't know? A No, sir.

Q You don't know how it came in there? A No, sir.

Q What did you do with the carbon of the letter after you wrote it? A To the best of my

recollection it was placed in a letter file which I had in my desk where all carbon copies of letters and my reports that I made were.

Q Will you say to the best of your recollection? Do you recollect anything about it? A I recollect that is the letter.

Q I am talking about what was done with the carbon. Do you recollect what you did with the carbon? A No, I do not.

Q You do not. But it was found in a steel box in the drawer of your desk? A I think Mr. Wallace of the Attorney General's office informed me that it was found there.

Q Weren't you there when it was found? A Not the first time.

Q Weren't you there in the office with Mr. Wallace when that carbon copy was taken out of the steel box that was in your desk? A I took the letter out of the box at that time and turned it over to Mr. Wallace, and he had been through the steel box I think a few days before that.

Q And you don't know how it got in the steel box? A I do not.

Q Was that steel box your personal property? A No, I think there were other records pertaining to State work in that box.

Q Was the steel box, was that your personal property? A The actual steel box?

Q Yes. A I think it was paid for by the State.

Q Did you have personal papers in it? A Yes.

Q And it was locked? A And the key in my desk. I did not carry the key on my person.

Q You locked the box and put the key in your desk? A When I used the box.

Re-direct examination by Mr. Vickers.

Q Mr. Evans, you have been asked whether usually or invariably, whichever the form of the question was, the initials down in the left-hand corner, the lower corner of a letter as they are here, would indicate the initial of the stenographer. You said you would so take it; if you saw the letter as a small letter instead of a capital letter, a small letter as it is in this, instead of a capital letter, would you assume that it stood for the stenographer's name? A I think not. Usually the stenographer's initial is in a large letter, capital letter.

Q I show you Exhibit S. 11, which is on the same kind of stationery, relative to broadcasting, and ask you whether the letter which appears there is a capital letter, and whether you know whose name the capital letter stands for? A It is a capital letter and I know whose name the letter "K" stands for.

Q Who? A A Miss Koehler, a stenographer in the Attorney General's office.

Q Mr. Evans, you have been asked why you did not take into consideration the depreciated value according to quotations on or about June 14, 1928, against the acqusition price of the securities. I ask you whether you either then or at any time in making up the assets of the corporation, whether you took into account the increase in the value of the securities over and above the acquisition price and the quotations?

Mr. Conlon: I object to that, unless it appears there was an increase in price.

Mr. Vickers: All right. I will withdraw the question.

Q During any of the times on September 21st, if that is the correct date of the directors' meeting, on December 5th if that is the correct date of that meeting, or at any other time were there securities unsold which had increased in value over and above the acquisition cost of the same? A There were.

Q That is, securities unsold? A Yes.

Q Did you at any time take into account in arriving at the surplus or net profits, for the purpose of declaring dividends, that increased value of those securities according to the quotations of the defendant? A I did not.

Q Have you with you a list of the securities held by your company, their acquisition cost of each security particularly, and the sales price of the particular security during the period from the inception of the company to the 31st day of December, 1928? A Yes.

Q And from what is that computed? Have you the original records for the computation of that? A Those records were taken from the books of the corporation.

Q Have you a list? A I have.

Q Let me see it.

Mr. Conlon: I object, your Honor.

Mr. Vickers: To my seeing it?

Mr. Conlon: My ground of objection is this. This defendant has refused to produce data made from the books on the ground that it is not properly admissible, and therefore I object to this. In other words, I object to him producing such data as he wants.

The Court: You object to anything but the production of the original records as evidence?

New Jersey State Library

Mr. Conlon: Either that or the production of all data.

Mr. Vickers: Of course I would be perfectly willing and have from the beginning been willing to produce all data up to date made by anybody showing the condition of the books of this company, and the Prosecutor knows that he has thwarted me in it. I think I have a right to put it into my direct case.

The Court: Yes, if it comes from original sources. If the State objects to the use of the memoranda taken from the books I will sustain the objection.

Mr. Vickers: I haven't offered the contents of it.

The Court: I will permit you to answer it if he had it.

By Mr. Vickers.

Q This is it? A Yes, sir.

Q This is it. Can you tell us from any original memoranda that you have, the broker's notice or whatnot, the acquisition price of ten shares of common stock of the National City Bank of New York? A I can.

Q I show you some papers handed to me by Mr. Hardy, and I ask you whether those are the broker's slips to which you refer? A Yes, they are.

Q Is there a broker's slip there referring to the ten shares of National City Bank of New York?

Mr. Vickers: Withdraw that question and I will reframe it.

The Court: We will take a recess until tomorrow morning at 10 o'clock, and that is dependent upon the fact that the Court expects this case to be finished by tomorrow. We will sit as late as required but I would like to see this case finished tomorrow.

(Adjourned to ten o'clock A. M. June 6, 1929.)

ESSEX COUNTY COURT OF QUARTER SESSIONS.

Thursday, June 6, 1929.

EIGHTH DAY.

Continued pursuant to adjournment.

Present, counsel as before stated.

DEWI T. EVANS, resumed the stand.

Re-direct examination (continued) by Mr. Vickers.

Q At the time of adjournment yesterday I had asked a question concerning some securities and I had withdrawn it and reframed it. I now ask you whether you can tell the Court and jury approximately what the profit or loss was on the shares of stock of the National City Bank of New York sold between the time of acquisition and the 31st day of December, 1928, if it was sold. Can you tell yes or no? A Yes, sir.

Q What was it? A About $3,700.

Q Was that a profit or a loss? A Profit.

Q Can you tell the Court and jury what the profit or loss was on the shares of stock of Phillips Petroleum Company, if sold between the time of acquisition and the 31st day of December, 1928? A Yes, sir.

Q How much? A About $3,500.

Q Profit or loss? A Profit.

Q Can you tell the Court and jury what the profit or loss was on the Sears Roebuck Company stock owned by the corporation or sold prior to the 31st day of December, 1928? A Yes, sir.

Q How much? A A profit of twenty-two hundred and some dollars.

Q Can you say whether or not the figure given by Mr. Cohn of something upwards of $1,270 and some odd dollars was a profit on securities owned by the corporation acquired and sold prior to the 31st day of December, 1928? A I think that is the correct amount.

Q Can you say whether or not approximately the income from investments owned by the corporation up to that period of time was approximately $2,382.78? A It was.

Q Being a total profit taking an income and profit from the sale of somewhat over $15,000? Is that right? A Yes, sir.

Q Now, approximately then, what is the total amount of all the dividend payments paid or declared up to and including the 31st day of December, 1928? A Approximately $6,700.

Q $6,700 or $7,700? A $7,700.

Q That is ordered, declared and paid? A Yes, sir.

Q Up to that time the dividend declared December 5th had not been paid? A That is true.

Q That figure includes that, doesn't it? A It does.

Dewi T. Evans, re-direct.

Q By the way, can you give us approximately the total amount in dollars and cents of the securities acquired and sold up to the 31st day of December, 1928, from which this profit and loss we referred to was taken? A About $125,000.

Q Were there then remaining the securities owned by the company after the 31st day? A Yes, sir.

Q With respect to these securities were they or were they not in your individual name? A I had been named as nominee by the Board of Directors and those securities were in my own name.

Q In your personal name of Dewi T. Evans? A Yes, sir.

Q Did the proceeds of the sale go to the treasury of the company or to you? A Every dollar went into the treasury of the corporation.

Q Up to the time of the newspaper notoriety that has been referred to and the raid as it has been called by the Prosecutor of the Pleas of Essex County, had any complaint come to you from any of the 1,600 stockholders and subscribers, if that is the correct number, with respect to any representations made by you, or anyone on behalf of your corporation?

Mr. Conlon: I object.

The Court: Sustain the objection.

Defendants' counsel prays an exception to this ruling of the Court.

Exception allowed; let it be signed, and it is signed and sealed accordingly.

DANIEL J. BRENNAN,
Judge.

Dewi T. Evans, re-cross.

Re-cross examination by Mr. Conlon.

Q These figures you have been testifying to in answer to Colonel Vickers' questions about your stock transactions you got from what source? A From the books.

Q When? A At various times.

Q When is the last time you looked at those figures? A When is the last time I saw those figures?

Q Yes. A I think this morning, to refresh my recollection.

Q What figures did you look at? A Figures as shown on the books of the corporation.

Q What specific figures did you examine this morning? A The cost price of the securities, the selling price of the securities and the amount of the profit taken.

Q Did you make that examination from the books of the company or from the statements taken from the books? A A statement taken from the books.

Q By whom was that statement made? A I really don't know who made it.

Q Have you the statement now? A I have not.

Q Where is it? A I think our counsel has it.

Q Will you produce it?

Mr. Vickers: I have it here, but this examination is not proper.

Mr. Conlon: I am entitled to an answer to my question.

Mr. Vickers: All right, do you want the statement (handing paper to Prosecutor)?

Dewi T. Evans, re-cross.

Q You say that there were no stocks or bonds sold at a loss?

Mr. Vickers: He has not said so.

Mr. Conlon: I am asking him.

Q Did you say that? A No, sir.

Q As a matter of fact there were some sold at a loss, were there not? A There were some bonds sold and some stocks sold and a small loss of a few hundred dollars taken.

Q These figures that you have given us showing a profit on all your securities sales up to the 31st of December has had no reference to the market value of the unsold securities as of December 31st, is that correct? A The market value of the unsold securities.

Q Can you answer that yes or no? A Will you repeat that please?

Q (Question read by stenographer.) These figures that you have given us showing a profit on all your securities sales up to the 31st of December has had no reference to the market value of the unsold securities as of December 31st, is that correct? A Yes.

Q And as a matter of fact on December 31st as to your unsold securities, there was a considerable depreciation from the cost price? A That is not my recollection.

Q Well, did you look at any statements to refresh your recollection on that? A As of December 31st?

Q Yes. A No.

Q And you don't know whether that is true or not? A I would have to check each individual security.

Q In the memorandum that you say you had before the Board of Directors in the meeting

of June 14th, on that day you owed the Broad & Market National Bank $80,000, is that correct?

Mr. Vickers: Now, that is not proper re-cross examination. The Prosecutor has gone all over that thing. Now, are we going eternally and interminably to keep going back and forth?

The Court: Is it objected to?

Mr. Vickers: It is objected to.

The Court: Objection overruled.

Defendants' counsel prays an exception to this ruling of the Court.

Exception allowed; let it be signed, and it is signed and sealed accordingly.

DANIEL J. BRENNAN,
Judge.

Q At that time you owed the Broad & Market National Bank $80,000, is that right? A Yes.

Q You were paying them interest at the rate of six per cent. per annum? A Yes.

Q When was that loan taken out of the bank?

The Court: You mean paid?

Mr. Conlon: Yes.

Q When was the note discounted in the bank, the $80,000 note? A I think May 15th or 20th.

The Court: I understand, Mr. Conlon, you mean when was the loan discharged?

Mr. Conlon: No, negotiated.

The Witness: I think May 15th or 20th.

Q The interest on that night was in the neighborhood of $90 a week, is that correct? A I think so, yes.

Q Oh, well, now, what do you mean you think so? Isn't that about right?

Mr. Vickers: I object to that, that manner of addressing the witness. I do not think the Prosecutor has a right to snarl at the witness who says under oath he thinks. If he has testimony to contradict, let him produce it. He is not entitled to take that attitude.

Mr. Conlon: I do not think counsel has any right to interrupt my cross examination unless he makes an objection.

Mr. Vickers: I do object.

Mr. Conlon: There is no objection on the record.

The Court: I have no objection to counsel having a good time up to a certain point, but beyond the reasonable limitations all this scenery on the part of counsel on either side gets us nowhere. If there is any impropriety on the part of counsel, either for the State or for the defense, the Court will immediately admonish them. Proceed.

Q Was the interest on your loan in the bank about $90 a week? A I think it was.

Q Did you enter that item of interest in this statement? A No, sir, that is not taken into consideration.

Q And that interest up to the 30th of June would have run for five or six or seven weeks, is that right? A I think about six weeks.

Q At the rate of $90 a week? A Yes, sir.

Q That was a definite obligation of the company? A Yes.

Q Accrued as of June 30th, is that right? A Yes.

Q Why wasn't it taken into consideration? A As of the 14th of June, the day of the declaration of dividends, my opinion was, my agreement as a director of the Public Service Sales that all expenses would be paid by that organization.

Q Did you consider the interest on your bank loan an expense to be borne by the Public Service Sales Corporation? A The understanding with the Board of Directors—

Q No, just answer my question. (Read by stenographer) Did you consider the interest on your bank loan an expense to be borne by the Public Service Sales Corporation? A Yes.

Q Will you turn to your books, please, and let me know from your books if there was any overhead expense paid by the Universal Finance Corporation up to June 30th? A This book seems to start July 31st. Is this the right one, Mr. Hardy?

Q I show you what appears to be a general ledger covering this. See if you can tell me from there whether you can answer this question? A It will necessitate going into each sheet, Mr. Conlon.

Q You say you cannot readily determine that? A No, not from this ledger.

Q All right, never mind.

Mr. Vickers: I will stipulate with you what the situation is.

Mr. Conlon: No, I will prove it by Mr. Cohn in further questions.

Dewi T. Evans, re-direct.

Re-direct examination by Mr. Vickers.

Q You have been asked whether or not there was any reference made to the market value of the unsold securities. On the unsold securities was there any loss or was there a profit?

Mr. Conlon: I object. The witness has already answered the question.

The Court: How can there be a profit or loss on the securities unsold; there may be a difference in the acquisition and the market price at the end of the year?

Mr. Vickers: The question by the Prosecutor was there was no reference to the market value of the unsold securities, from which the jury may draw the inference that there was a loss. Wouldn't the jury be entitled to know whether or not there was a depreciation. I will put it "depreciation."

The Court: What the difference may be between the acquisition and the market as of the close of the year. He can testify to that, if he knows. There would be no loss or profit actually unless they were sold. There would be a difference, maybe favorable or unfavorable. I suppose the design of the State's question was to establish whether or not there was a depreciation in the amount remaining.

Mr. Conlon: Yes. The witness has already said he doesn't know.

Mr. Vickers: He said without reference to each particular security he could not tell. However, I will withdraw the question.

Dewi T. Evans, re-cross.

Re-cross examination by Mr. Conlon.

Q Just a minute. I show you something which purports to be a journal, and I call your attention to an entry made in June, 1928—

Mr. Vickers: As of June, 1928.

A Yes, sir.

Q The items I am indicating now were operating expenses of the Universal Finance Corporation, were they not? A Operation and organization expense.

Q And those amounts were paid by the Universal Finance Corporation as of the month of June, 1928? A Yes, sir.

Re-direct examination by Mr. Vickers.

Q Those are the entries of Haskins & Sells? A Yes, made in August, possibly, 1928.

Q By the way, either on June 14th or on June 30th had the entries been written up or were they written up up to the period you just speak of by Haskins & Sells or their representative? A They had not been.

Re-cross examination by Mr. Conlon.

Q I am sorry, your Honor, I have forgotten something. Mr. Evans, in the meeting of June 14th was Mr. Fitzmaurice present? A It is my recollection that Mr. Fitzmaurice was present.

Q He was present at the meeting in September which declared the dividends? A I don't think—it is my recollection that Mr. Fitzmaurice did not attend the September meeting.

Dewi T. Evans, re-cross.

Q What about the December meeting? A It is my recollection that Mr. Fitzmaurice did not attend the December meeting.

Q Now, in the June meeting did you show to Mr. Fitzmaurice this so-called financial statement that you presented to the Board of Directors?

Mr. Vickers: That you did?

Mr. Conlon: I am referring to Exhibit D. 23.

Mr. Vickers: May I have the question?

(Question read.)

Mr. Vickers: No objection.

A I had that memorandum and as I recall mentioned those amounts to the directors.

By the Court.

Q The question is, did you show it to Mr. Fitzmaurice at that meeting? A No, I think not.

By Mr. Conlon.

Q Did you explain it to him? A I mentioned the amounts as shown on the memorandum.

Q Did you explain these amounts to Mr. Fitzmaurice at that meeting?

Mr. Vickers: How could he show them?

The Court: I think he sufficiently characterized that.

By the Court.

Q Did you show him that statement? A I think I had it on my desk.

Dewi T. Evans, re-cross.

Q Did you show it to him is the question? A No, I did not.

Q Why be so evasive?

By Mr. Conlon.

Q Did you tell Mr. Fitzmaurice, at the June meeting, that you were taking credit for the purpose of declaring a dividend of the interest on stocks in the amount of $900? A I mentioned that amount, $900, as being the interest on stocks.

Q You told Mr. Fitzmaurice that you were taking as an earning of the company interest on stocks to the amount of $900, although dividends had not been declared on those stocks except the amount of $185? Did you tell him that? A That is my recollection.

Q And did you tell him that you were taking credit in your calculations for the value of rights to the amount of $657, although those rights had not been exercised? A That is my recollection.

Q Now, is your recollection on that point good or bad, or how clear is it? A My recollection is clear as to the actual amounts mentioned to Fitzmaurice which are on that memorandum.

Q You mean the totals? A The totals.

Q Now, I am not asking you about the totals. I am asking you whether you explained these items to him. A Not in the same phraseology, the same wording that you just used now.

Q Tell me as nearly as you can in what phraseology you did explain it to him? A May I have the memorandum? The first item is interest on bonds, $289.59. That would be that that was accrued interest on bonds, as I recall, of June 30th.

Q Pardon me. I am not asking you, if you are, to explain that statement to me. I understand it. I am asking you to tell us what phraseology you used in explaining it to Mr. Fitzmaurice in the June meeting. A That the corporation had accrued interest on bonds due to June 30th of $289.59, that the corporation had earnings, would have earnings, in the form of dividends on stocks in the approximate sum of $900, and that the estimated amount of earnings from interest on small loans up to June 30th would be $300, and that as of June 14th that the cash value of rights at that time was $587.

Q And you explained that all to Mr. Fitzmaurice? A That is my recollection.

Mr. Vickers: If there is a certificate of stock that has actually been offered in evidence, I would like to use that. Here is one. I would like to avoid the necessity that has been referred to, of taking the actual certificate of stock which is offered for identification and which belongs to a witness here and is of value. There is no sense of keeping that from him.

The Court: I assume there is no objection.

Mr. Vickers: Can we agree that a photostat which is a certificate apparently in the name of Thomas I. Perry shall be substituted for the original certificate that belongs to Mr. Armour and marked Exhibit D. 4 in evidence? Is that satisfactory?

Mr. Conlon: Yes, certainly.

(The same is received in evidence and marked Exhibit D. 4.)

Offer of Exhibits.

Mr. Vickers: We now offer in evidence the Exhibits D. 15, 16 and 17 for identification, being the rules and regulations proved by a witness of the Department of Banking & Insurance.

Mr. Conlon: No objection.

(The same are received in evidence and marked Exhibits D. 15, D. 16 and D. 17 respectively.)

Mr. Vickers: We offer in evidence Exhibit D. 1 for identification, which is the copy of the subpoena produced by Mr. Plumer.

Mr. Conlon: No objection.

(The same is received in evidence and marked Exhibit D. 1.)

Mr. Vickers: We offer Exhibit D. 7, being the subscription contracts of the State's witness, John Thomas.

Mr. Conlon: No objection.

(The same is received in evidence and marked Exhibit D. 7.)

Mr. Vickers: We offer in evidence Exhibit D. 9 for identification, the subscription contract of George Goetz.

(The same is received and marked Exhibit D. 9.)

DEFENSE RESTS.

Richard J. Fitzmaurice, in rebuttal, direct.

RICHARD J. FITZMAURICE, recalled in rebuttal.

Direct examination by Mr. Conlon.

Q Mr. Fitzmaurice, I show you Exhibit D. 23, and ask you if you ever saw that before? A No.

Q You testified the other day or last week, I forgot when, that you attended the directors' meeting of the Universal Finance Corporation on June 14th. A Yes, that is the first meeting I ever attended.

Q On that occasion did Evans show you any figures upon which was based the decision whether or not to award dividends? A I already testified to that.

Mr. Vickers: That is objected to on the ground that that is not rebuttal.

Mr. Conlon: I will withdraw the question.

Q On that occasion did Evans explain to you that the figures that he had compiled for the purpose of determining the declaration of the dividend included an item of $900 which he said was interest on stocks?

Mr. Vickers: That does not contain all the facts for contradiction. I do not object if your Honor will remember that part of that is covered.

The Court: Well, I think it was $165 of that actually declared, the rest of it undeclared.

Mr. Conlon: The items, your Honor, I think the question covers this item.

Mr. Vickers: All right. I will withdraw my objection.

The Court: I think in justice to the witness that that ought to be followed by the further question.

Mr. Conlon: It will be, your Honor.

A As I said before, Mr. Conlon, I don't remember any of the figures now. That was a year ago, and I do remember Mr. Evans stating that from the books there were more than sufficient assets to declare a dividend, and I had no reason to doubt his word.

Q (Read by stenographer) On that occasion did Evans explain to you that the figures that he had compiled for the purpose of determining the declaration of the dividend included an item of $900 which he said was interest on stocks? A I don't know. I can't answer that.

Q Did on that occasion Evans tell you that he was taking into consideration an item in the amount of $715 which was what he called interest on stocks, that is, proportionate earnings up to June 30th of stocks upon which no dividend has been declared? A I remember him distinctly saying, of course, that earnings were included. Now, as to any particular item of $715, or anything like that, I don't know.

Q Do you know whether or not such a computation was properly taken into consideration in declaring dividends?

Mr. Vickers: I object on the ground—

The Court: Sustain the objection, on the ground it is not proper rebuttal.

Q Mr. Fitzmaurice, did Evans tell you in any of the details of the figures which he had on the

14th of June? A Yes, he told of what the assets were at, certainly.

Q Yes. A But as to any particular one or several of them I could not tell you now what they were.

Q Do you remember whether or not he included in the earnings of the company the interest upon stocks upon which no dividend had been declared?

Mr. Vickers: I object, unless the question is confined to what Mr. Evans told him. I do not object to that, but whether Evans included anything would be speculative.

Q Did Evans tell you that? A I don't remember that. I really don't.

Cross examination by Mr. Vickers.

Q Mr. Evans was at that time giving what he reported as assets of the company, isn't that right? By the way, was there any discussion at that time that there were no charges against that because of an arrangement with the sales agencies that the expense be borne by that agency up to and including the 30th of June? A Of course that was all done before I became connected with this company and my understanding was—

Mr. Conlon: I object to the witness' understanding.

A I don't recall any discussion, but I had an understanding, Colonel Vickers.

Q From your knowledge of the business that was there conducted while you were a director,

was that the arrangement that the Public Service Sales Corporation, or Edwards, whichever it was, was to bear the overhead expense up to the 30th day of June?

Mr. Conlon: Objected to as immaterial.

The Court: I will admit it. I so understood it.

A Yes.

Mr. Conlon: Now, if your Honor please, this is not rebuttal, but there are two or three figures that I want to get into the record and ask Mr. Cohn about.

Mr. Vickers: Which you have overlooked?

Mr. Conlon: Yes.

Mr. Vickers: Anything that the Prosecutor may have overlooked I will consent to being put in at this time. We have been going now for ten days and anything that has been overlooked should go in.

JULIUS COHN, recalled in behalf of the State.

Direct examination by Mr. Conlon.

Q You testified to the acquisition price and the quotation price of the securities of the Universal Finance Corporation as of June 30th?

Mr. Vickers: That was not overlooked.

Mr. Conlon: No.

Q Now, I want to ask you if you can give me the same information as of September 30th? A Yes, sir.

Q What was the cost price of the securities as of September 30th?

The Court: Do you mean the acquisition price?

Mr. Conlon: Yes.

A $171,441.42.

Q What was the quotation price? A $153,317.62.

Q Does that show a net appreciation or depreciation? A Depreciation.

Q Of how much? A $18,123.80.

Q As of November 30th; let me have those figures. A November 30th?

Q Can you give them to me as of January 4th?

Mr. Vickers: That is objected to at this time on the ground that there is neither an interest bearing period payable or dividend period near that—

Mr. Conlon: I will withdraw that question.

Q Can you give it to me as of December 31st? A No.

Q Can you give it to me as of November 30th?

Mr. Vickers: That is objected to for the same reason, on the ground that is not proper rebuttal, could not have been overlooked, because it would not have been competent before. This is a mere theory of the witness

and not alleged on any false representation.

The Court: Objection overruled.

Defendants' counsel prays an exception to this ruling of the Court.

Exception allowed; let it be signed, and it is signed and sealed accordingly.

DANIEL J. BRENNAN,
Judge.

A What is the question?

Q (Question read.) A Yes, sir.

Q Let me have it.

Mr. Vickers: I make the same objection.

The Court: The same ruling.

Defendants' counsel prays an exception to this ruling of the Court.

Exception allowed; let it be signed, and it is signed and sealed accordingly.

DANIEL J. BRENNAN,
Judge.

A The acquisition price on November 30th was $109,153.28, and the market quotation value was $111,859.50, showing an appreciation of $2,606.22.

Q Now, did you make the same computation as of June 14th? A I did.

Q I show you a memorandum. Is that the memorandum you made as of that time? A This is.

Q Give us the figures on that day? A On June 14th the acquisition cost of the securities owned was $168,661.29. The market quotation value was $158,359.38, indicating a depreciation of $10,301.91.

Julius Cohn, in rebuttal, cross.

Q Now did you at my request compute the annual dividends of the securities held by the Universal Finance Corporation as of June 14th? A Yes.

Q How did you compute that? A By making reference to the New York Times Financial Section as of the morning of June 15, 1928.

Q I am talking about the dividends. A Pardon me. Will you repeat the question?

Q Did you compute the rate of dividends on the security holdings of the Universal Finance Corporation, as of June 14th? A Yes.

Q Tell me how you did it? A We took the annual dividend rate of each stock as of June 14, 1928, compiled the total annual dividends on each stock and then arrived at a grand total of all of the dividends which would be earned for that year on all of the stocks owned by the company as of June 14, 1928.

Q Now, on June 14th the cost price of those stocks was what? A $168,661.29.

Q And the market value or quotation price? A $158,359.38.

Q What was the total annual dividends of all of these stocks together? A $6,425 with an added possible dividend of the American Super Power Corporation, which was paid in stock, not in cash. The total cash dividends were $6,425.

Q And that was what percentage of the acquisition price of those securities? A 3.82 per cent.

Cross examination by Mr. Vickers.

Q For what purpose did you compute the difference in the acquisition price and the quotation price of the securities as of June 14th? A For what purpose?

Q Yes. A At the request of the Prosecutor.

Q Not as a matter of accountancy, did you? A No. I don't understand the question, "As a matter of accountancy."

Q When I ask you whether you compute that as a matter of accountancy, you don't understand the question? Is that so? A That is right.

Q Not for the purpose of either writing that as a debit or credit, did you, as a matter of accountancy?

Mr. Conlon: I object to that. The witness has testified he did it at my request.

Mr. Vickers: That does not make any difference.

Mr. Conlon: I think it does.

Mr. Vickers: I have a right to cross examine.

The Court: All right. He may be cross examined on that question.

Mr. Conlon: I do not think this witness necessarily knows what my reason was.

Mr. Vickers: I did not ask him that.

Mr. Conlon: I submit the question has been answered.

Q (Read by stenographer) Not for the purpose of either writing that as a debit or credit, did you, as a matter of acountancy? A I am frank to say I don't understand the question.

Q If you had been making up a balance sheet, you could not have added as an asset under your theory an increase between the acquisition price and the quotation of those stocks still held, could you? Yes or no. A Yes.

Q You could have? A Yes.

Julius Cohn, in rebuttal, cross.

Q Did you at any time in any of these figures that you have given to the Prosecutor add as a part of the assets an increased valuation of the stocks still held unsold?

Mr. Conlon: I object, your Honor.

The Court: I sustain the objection.

Q Is it not a fact that according to your method of accountancy neither the depreciation nor appreciation of stocks or securities actually held may be shown either way in your balance sheet?

Mr. Conlon: I object, your Honor. I am not objecting because it is not cross examination, but I am objecting for this reason. This witness has testified to nothing upon which this question could be based.

The Court: Sustain the objection.

Defendants' counsel prays an exception to this ruling of the Court.

Exception allowed; let it be signed, and it is signed and sealed accordingly.

DANIEL J. BRENNAN,
Judge.

Q You have heard this morning the testimony of Mr. Evans with respect to the gain and loss as to three particular securities sold prior to December 31st and the securities as a whole sold on or prior to December 31, 1928. Can you tell whether or not approximately the figures given by Mr. Evans are correct? A I have checked those figures. They are absolutely correct.

Julius Cohn, in rebuttal, cross.

Q Have you checked that the profit that is referred to by Mr. Evans actually went into the treasury of this company? A Yes.

Q And did it? A Yes.

Q By the way, the Super Power Company dividend payable in stock—did you compute the value of that? A No.

Q Was it quoted? A Yes.

Q The value of it was quoted? A The value of a stock dividend? Yes, it is quoted, because it becomes regular stock after it is issued to a stockholder.

Q And the stock was quoted? A After.

Q After issue it was quoted, is that right? A Yes.

Q Did you compute it? A No.

By the Court.

Q You mean on the theory it was a capital asset? A Yes, that it was an increased acquisition.

By Mr. Vickers.

Q Do you know how much it was? A I don't offhand, without reference.

Q In answer to the question by the Court just now did you say you did not compute it as a capital asset? I don't know whether I heard it or not. A Because it was an acquisition—because it was an increase to the acquisition of the stock held. In other words, the original stock held we consider should have a divided cost of just so much less as a result of the increase.

Q Let us see. You computed the earnings of these stocks or securities when they are paid in cash, is that right? A Yes.

Q And you omitted to include as a part of the earnings assets of those same securities and stock dividends which had quoted market value, is that right?

The Court: Wasn't the net result the same?

Mr. Vickers: No.

The Court: Yes, it was. Mr. Cohn said he lowered the acquisition cost in view of the fact of the character and it amounted to the same thing.

Mr. Vickers: How could he? He said he didn't know the value and had not computed it. He doesn't now, and how could he have deducted from anything and added an amount credited and arrive at his result?

The Court: Because the original cost brought that much more as of the dividend date of the stock dividend.

The Witness: Let me explain it this way—

Mr. Conlon: I object.

The Court: I will let him answer it.

A A stock dividend is not considered as a realized income, as a cash dividend or yield, but it is taken into consideration in connection with the total valuation of the stocks. This is similar to the other angle of the stock right theory.

Mr. Vickers: Yes.

The Court: In other words, if you get 100 shares at $1,000 and got a stock dividend of 50 shares, as an accounting proposition you would get 150 shares for $1,000?

The Witness: That is right.

By Mr. Vickers.

Q In the problem you worked out for the Prosecutor, you did not allow for 150 shares of stock for an income, did you, but allowed only for the 100?

Mr. Conlon: I object.

The Court: I will let him answer it.

A As of June 14th the company had fifty shares of American Super Power Corporation. I can say as of June 14, 1928, the company did not have any stock dividend declared in its favor. This corporation did not have, from the American Super Power Corporation that stock dividend declared.

Q All right, as of the time of its acquisition this corporation had fifty shares of American Super Power Corporation, didn't it? A Yes.

Q And a stock dividend was declared? A No, sir, not as of June 14th.

Q I didn't ask you that. A Pardon me. What is the question?

Q I said thereafter a stock dividend was declared, is that right?

Mr. Conlon: This witness has testified that he has computed the cash dividend on the security holdings of this corporation at my request, but has stated what the cash dividends are now and there is no question that he did anything else or claimed to do anything else.

The Court: How he arrived at the average yield may be a subject of cross examination.

Mr. Conlon: There is no claim that he took anything into consideration except the cash dividends.

The Court: He took the acquisition cost as a basis of establishing what the yield in percentages is for the year. That is how he established the figure of three and three-eighths, or whatever it was, as the acquisition cost.

Mr. Conlon: I think this is confusing the issue, and that is why I object.

Q Is it or is it not a fact that you computed this three and something percentage average yield without taking into consideration the value of the stock dividend declared on the American Super Power Corporation? Yes or no?

Mr. Conlon: I object.

The Court: What difference does it make?

Mr. Vickers: He testified to the average on the total yield of this corporation and the witness added himself that that was subject to a stock dividend of the American Super Power Corporation. I am entitled to show the value of that to show whether he is right on three and a fraction or whether Mr. Evans is right on five per cent.

Q (Question read.) A I cannot answer that yes or no. I must explain.

Mr. Vickers: It is an astounding thing that when the witnesses are pressed for yes or no answers that they cannot do so.

Julius Cohn, in rebuttal, cross.

Q Can you give me a yes or no answer to that question?

The Court: I cannot make anyone answer yes or no, Colonel Vickers, when the question requires an explanation.

Q I want a yes or no answer, and then you can make your technical explanation. Can you answer yes or no? A Yes.

Q All right, answer it. A No. The American Super Power Corporation was a company started some time in the spring of last year, it is a holding company of Morgan & Company, and took over a number of stocks. No, I am in error; it is a utility holding company and as of June 14th last, did not pay a stock dividend.

Mr. Vickers: I ask that the answer be stricken out. He took the yield for the year—

A I took the figures as of June 14th from the New York Times paper.

Q You took the year and computed it in dollars and cents for the year and divided it for the period and made it applicable by a percentage of 3.82 as of June 14th? A Upon the basis as of June 14th.

Q You took the gross yield for the year? A That's right.

Q In the gross yield for the year you made no allowance for a stock dividend of the American Super Power Corporation, did you? A That's right.

State Rests.

Motion for Direction of Verdict as to defendants Cawthorne and Perry.

Mr. Vickers: I have a motion which I wish to address to your Honor before the defense rests.

The Court: The jury may be recessed pending argument on the motion.

Mr. Conlon: In reference to the defendant Cawthorne, your Honor heard my motion in connection with the defendant Perry. I feel that the evidence against Cawthorne in this case is on exactly the same plane. I think he may have been culpable for some of the things he did. I think whatever he did, as far as the State's evidence is concerned, his testimony that he did it at the direction of Edwards, Hollenbaugh and Evans is uncontradicted. I think he is entitled to the benefit of the doubt if he made the representations he did make at their direction. I think it is a fact he did not have access to those books and statements to verify those representations. I do not care to ask the jury to find him guilty. I move that the indictment as to him be nolle prossed, and on consent, I will move if necessary, if it is preferable, that a direction of verdict be entered for him.

The Court: You may express that preference on the record.

Mr. Conlon: I think in fairness to him he is entitled to a direction of verdict.

Mr. Vickers: I think so too, your Honor, after the defense has gone in. I think he is in jeopardy and I call your Honor's attention to the case of State against Silvers.

The Court: My notion is that as a practical expedient that the nolle pross is a more complete admission if it were not for a possibility of reviving the indictment.

Motion for Direction of Verdict as to other defendants.

Mr. Vickers: The same indictment, as I recall it, in the case of the State against Silvers was actually revived.

The Court: Well, to avoid that possibility I will direct as to both Perry and Cawthorne.

Mr. Conlon: May I make this request, your Honor, that that direction be entered before the summation?

Mr. Vickers: Oh, yes.

The Court: Yes. You do not want the verdict returned until after?

Mr. Conlon: Yes. I would rather have the verdict returned before the summation.

Mr. Vickers: I take it when the jury returns, your Honor will direct the jury to acquit on the motion of the State by a verdict of direction of acquittal in the box.

The Court: All right. They will be formally found not guilty in the box before the summation on the part of counsel.

Mr. Vickers: If your Honor please, at the close of the State's case now on behalf of the remaining three defendants, as the situation will be, I take it, and each of them, we move for a direction of a verdict of not guilty on all of the grounds stated and urged upon our motion for a direction of a verdict at the close of the State's case, and for each and all of the reason's assigned then, and on the further ground that now by affirmative evidence it appears and uncontradictedly that the State has failed to make out a prima facie case, has failed to make out a case which as a matter of law would warrant your Honor sending this case to the jury on an assumption that if a verdict of guilty were reached the Court could say that the jury had evidence beyond a reasonable doubt of the

conspiracy charged against these defendants in the indictment; and on the further ground that the State has failed to prove any of the overt acts as charged in the indictment.

Briefly I would like to, in support of this argument, review the exact charge of the indictment, stripping the indictment of its technical and perhaps superfluous language. The charge is that on the 28th day of March, 1928, these defendants conspired to cheat and defraud divers persons unknown to the grand inquest by making public sale by means of false pretenses of the preferred stock of this corporation at a price which was fictitious and above the actual and market value thereof. That first must be sustained by proof from which the jury could find beyond a reasonable doubt that there was a conspiracy, a confederation between these defendants, or two of them, at least, to cheat and defraud by means of the false pretenses alleged. I respectfully submit that the proof on the part of the State, confirmed by affirmative proof by the defendants now, is that the price was not fictitious. There was, as established by the evidence, an actual price, that it was actual, and that so far as the market in this case appears it was an actual price and not fictitious, and I bear emphasis on that because a thing which is fictitious is non-existent. I can see no other definition of that word that can be applied. It is not synonymous to an exaggerated price. There could be no synonym applied in the construction of this indictment except the definition of that word, which means the contrast, or the anonym would be real.

The Court: Isn't the excess over true worth, the alleged excess over true worth, a fiction, and in that sense a fictitious price?

Motion for Direction of Verdict as to other defendants.

Mr. Vickers: No. Fiction, your Honor, is a thing which does not and is not supposed to exist, as against reality. That is the differentiating factor, it seems to me, that for other things there may be synonyms which would modify that, but when you come to a price, a price is either real or it is non-existent.

The Court: A price is either real or fictitious.

Mr. Vickers: Exactly. I mean the non-existence must be the only synonym for fictitious, and whatever the definition of the word "fictitious" may be, it must be taken in conjunction with the further description of the actual and market value. It does not say that this was a fictitious price.

(A brief recess was taken.)

Mr. Vickers: Apropos to the point that was just under discussion: Surely there is no discussion, your Honor, of fictitious or fiction which does not take as a standard the difference between reality or actual truth. It seems to me that there can be no doubt about that. Now, then, for the purpose of carrying out my argument I think your Honor will search this evidence from all of the four corners and fail to find out what the proper value is of this stock under any proof in the case. The nearest we come to it, and I believe it wholly and absolutely irrelevant and beside the issue is $10.85 of liquidation. No one charges we ever made representation which guarded against liquidation under any possible set of circumstances.

The Court: $10.80 was not the liquidation price.

Mr. Vickers: The liquidation value is the testimony of Mr. Cohn.

Motion for Direction of Verdict as to other defendants.

The Court: I understood his testimony to be liquidation value was sixty-five per cent. of the subscription price.

Mr. Conlon: That was the same thing. It was the book value.

Mr. Vickers: No, he never said "book value," because he could not take the book value with his theory of accountancy because again we come to the point there were unrealized securities. The book value cannot be established even in liquidation until the assets are realized upon and the books are complete. But there is no proof, and it seems to me that this Court cannot permit this jury to wander off into the realm of speculation on its own theories of general business management. Somewhere, it seems to me, this Court must be able to put its finger on testimony and say, "Here is the proof in this case, so far as the set of facts and circumstances from which a jury—and your Honor at this time sitting as a judge of the facts and the law therefore is a juror, and you must say, "That is the true value," in order to establish the question as to whether or not the State has carried out the burden of its proof in saying this was a fictitious price—this was a fictitious price and above the actual and market value."

I take it that your Honor will proceed on the well recognized legal principle that value, market value, where there are no quotations by which the world may be guided, is that which a willing buyer and a ready seller, or the reverse, the ready buyer and the willing seller, agree between themselves as a price, provided—and there is the crux of this situation—provided there is no fraud as a matter of law. Now, in that connection it seems to me that in the absence of any witnesses

produced here who was unable to understand his subscription contract and these terms, and when he became a stockholder, the terms of the certificate of stock, your Honor cannot say that in this transaction there was a fraudulent representation. In a court of equity on the question of a receivership perchance there might have been. We are denied in this case an opportunity of showing how even the great Court of Equity dealt with this on the identical proposition of fraud, but surely we are entitled then to have the legal interpretation, the law interpretation, from the standpoint of the law court, put upon these contracts as to whether they showed a misrepresentation and whether in fact irrespective of anything that was done preliminary to the signing of these contracts, these parties, all of them, able to read and understand the obligation into which they entered, whether they have not, with their eyes opened taken those representations and only those representations, as a matter of law which are reduced eventually to the written contract between the defendant company and themselves. Eliminating even from consideration the fact that your Honor will search the evidence of these witnesses and fail to find that with two exceptions no one has produced a misrepresentation which is alleged is the indictment as against the defendants and no misrepresentation by the defendants themselves, but by a sales agent. It was not objected to for obvious reasons, but now I invite your Honor's attention to the fact that this indictment, in none of the charges charges that the defendants by their servants or agents, it does not even charge that these defendants together with other unknown persons conspired, and there is nothing here to warrant your Honor pointing

these defendants to any act of any representations of the corporation with which these defendants are affiliated in the absence of a direct charge, because the means are all set forth. It is not the omission, it is by radio talk, by advertising, by literature, and not what sales agents may have told as is the case in one instance where a sales agent is now, or Angle said that he made a representation on the authority of a man who if the jury were permitted to take this case, stands acquitted, and that is on the instruction as he took them by Mr. Perry.

I very respectfully urge that your Honor may not permit this jury to wander off into the realm of speculation and deal with a question which ought to be dealt with from the law standpoint, and a jury, not being permitted to get the earnest impression that this indictment charges these defendants with having, by their servants and agents, made any representations binding on them, which are false and fraudulent.

Now, of course, the fact of a conspiracy to cheat and defraud, it does seem to me, and when that deals with the question of value of stock, can be tested no better than by the conduct over a period of time encompassed under the terms of the indictment. It does not seem to me that you can expect on the question as to whether or not an overt act has been supported, it does not seem to me that you can isolate any conspiracy indictment and say unless you confine the State to the 28th of March for this conspiracy, then there must be a day when this conspiracy was consummated, and that was after the first overt act was committed and from thence on we have a new legal connection of these defendants we now cannot bind the other. During the forma-

tion of a conspiracy each defendant may point to the other by a declaration, by acts, but when the conspiracy is once over then nothing done by the defendants binds him alone. So, taking the testimony on the part of the State, supplemented now by this affirmative proof of the defendants, you have a clear picture here that these men, whatever bad judgment they may have used, whether they were wrong in ethics, whether their theories of financing or untenable and flighty, may have nothing wrong but an earnest effort to conserve every dollar for the stockholders whom they interested in this, and there isn't one scintilla of evidence that a nickel went astray and the affirmative evidence is to the contrary. Had we come even under the limitations put on the defendants by your Honor, of which I am not complaining, but I think I am entitled to use, which in the manner of addressing my argument on this motion to your Honor. Restricting us within a certain specified time to the period of the indictment and to the exclusion of a very vital and important period in this indictment; to show the consistent conduct of these defendants towards the conservation of every penny that they got. Now, isn't that as a matter of logic, as a matter of morals, from every standpoint that can be raised, isn't that utterly and absolutely inconsistent with the allegation of conspiracy to cheat and defraud? Where in the realm of reason and logic can one say that the conservation, a conscious conservation of every dollar of a trust fund given to him is engaged in a conspiracy to cheat and defraud the person for whom he holds that in trust and here in this case, the indebatable proof is first, on the part of the State and then affirmatively brought down to

date by this defense, uncontradicted and supported not only by the word of these defendants, but by the records in the case that this status, according to these men, was preserved as far as their power goes, in the face of harassments, and when I use that term I do not mean unlawful harassments, but they were harassments. The Prosecutor of the Pleas descends on this place and shows it up. Where is there a business in the world, except one that stands on a firm and honest footing, that can resist such a shock? Walk down to any bank here in the City of Newark and have the Prosecutor put his padlock on the door and see what happens to it. Here is this little business where the men stick by the guns, carrying on for the benefit of the stockholders, still coming out at the end without a dollar lost, without a deficit of interest not paid. It does seem to me that without affirmative proof it should appeal to your Honor that this case should not be put into the hands of a jury where a legal inference arises which negatives any inference of chance or speculation that any conspiracy ever existed, because the logical evidence shows a violent and antagonistic conclusion.

Now, then, your Honor, passing for the sake of argument and assuming that there may be evidence that the State has supported its charge of conspiracy, that would be utterly and absolutely insufficient under the law in this State. The conspiracy must be proved as charged, and in addition thereto an overt act must be proved as charged, and it must be proved, your Honor, not as an act isolated and apart from the charge, but the statute says, "And to effect the object thereof." It must be some object which is designed, it may not be successful, true, but it must

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be designed to effect a conspiracy. It would not do; it would avail us nothing if we had here the sole question that Mr. Evans and Mr. Hollenbaugh through wholly ridiculous, fantastic, asinine theory of business declared a dividend and paid the cost, $1,208.75. That would not do. That must be done for the purpose of effectuating this conspiracy. In other words, taking those two now as charged and the overt act—I am not saying that the State is limited to that by taking those two. It would be absolutely essential that from the evidence it be concluded that that was done for the purpose of cheating and defrauding, not done out of stupidity, not done for the purpose of boosting a campaign which was going on, not done because it is in conflict with something that perhaps their certified public accountant did not approve of, but because it is done on a theory different from Mr. Cohn's theory, but because it is done for the purpose of cheating and defrauding these people. That is what this jury would have to find. That is what your Honor must be able to put your finger on before you can let the jury have a voice in it, that they can find from the evidence in this case that there was this conspiracy as charged and that then on this 1st day of July they did cause this dividend to be paid for that purpose. Whether it is earned or not is wholly immaterial in this case. The pertinent question is, and that is the gravamen and that is the allegation of the overt act, that it must have been done to effectuate a conspiracy previously entered into, because only then and only in that way under this indictment up to this point has there been or could there be a crime committed under the law of the State of New Jersey relative and applicable to this indictment.

Motion for Direction of Verdict as to other defendants.

Of course I do not think it is necessary for me to review what the evidence on the point is. The situation which, it seems to me, confronts us is: Were the acts then done, whatever they were, right or wrong? Were they criminal? Were they criminally intended? In other words, the act, an overt act, does not have to be criminal, of course, but where the purpose of the conspiracy is criminal it must be to effectuate a criminal purpose, not the act itself criminal of course, but the overt act must be to effectuate. So that we are not concerned with the question whether Mr. Evans' theory as to how a dividend should be declared or how it should not be declared, whether that is right or wrong, whether it is legal or illegal, if it was not done for the purpose of effectuating a criminal conspiracy, a criminal combination previously entered into, it is of no force or effect so far as this charge is concerned, and I respectfully submit that there is nothing in here that would warrant your Honor in saying that the State has sustained that overt act.

Number two: On July 1st and on other days between that date and the taking of this inquisition, which is March 30, 1929, these five defendants did these things and they are all conjoined to make an overt act.

Now, I am not going to say to your Honor that they all, although they are all in one paragraph, that they all would have to be proved or the entire overt act alleged paragraphically as it were would fall. I won't make any such allegation as that to your Honor. It would not be helpful to the Court or helpful to the defendants.

But I do say this, that where overt acts are paragraphically stated they must be taken in their context. They as a whole where the

proof is applied to it must be harmonious, and you cannot allege in a paragraph setting out various acts to constitute an overt act that one of the defendants had red hair and one of them did not have any and another defendant stole something, and then add an entire lot of wrongful representations and then say, "Oh, yes, we failed in all our wrongful representations, but this defendant still has red hair and the other one has not got any." That is the graphic illustration of what I want to bring home on this paragraph. They are charged with disseminating advertising literature and did cause to be delivered over the radio addresses advertising the sale of the preferred stock of the Universal Finance Corporation. Let me interpolate at this point as a matter of fact you will fail to find a radio talk which mentions the Universal Finance Corporation. But I think that is casuistry, but that is the charge in this indictment, that they did so do it. It is not the fact, but I do not think that is sufficiently material. I only want to point it out as additional evidence how far the State went afield from supporting the gravamen of this charge wherein it was falsely pretended and represented that the Universal Finance Corporation was under supervision of the Department of Banking & Insurance of the State of New Jersey, that it was under bond to the State of New Jersey and that the stock thus sought to be sold was preferred stock upon which was payable cumulative dividends at the rate of six per cent. annually participating in fifty per cent. of the net earnings and that said preferred stock was paying dividends at the rate of ten per cent. annually, which dividends were being paid out of the earnings of said corporation, and then fol-

lows the affirmative negative of each and every-one with the allegations brought home to each and every one of the defendants that knowingly they made these statements knowing them to be false.

It is a matter which your Honor must determine as a matter of law by the inspection of the stock certificate No. 1, whether or not this was preferred stock upon which was payable cumulative dividends at the rate of six per cent. annually. It is alleged that it was represented to be that and was not that. The fact is as established by the State that that is what it is. Its legal import and tenor can be taken from no place excepting from the certificate itself, because the persons alleged to have been cheated were furnished with it, and there is no allegation here that any representation other than that which appears on the face of the stock was held out by way of a stock certificate *in futuro* to be delivered contrary to those terms.

It seems to me that your Honor would be obliged, if your Honor were the sole fact-finding body in this matter, if this were before your Honor to determine seriatum these questions, that this corporation so far as its business of small loans is concerned was under the supervision of the Department of Banking & Insurance. Whatever may be the fantastic notions of the Davis Committee or anybody else not charged with the authority and the duty determining this thing, the fact is that the statute itself, plus the conduct sworn to here by the representatives of the Department of Banking & Insurance, verify the statement made that it was under the supervision, that it is under the supervision, that whether lawfully or unlawfully under the super-

vision they exercised the supervision not only in this company, as the testimony has shown, but as the testimony also affirmatively shows here in all like companies, the Department of Banking & Insurance, and the testimony goes so far here that irrespective of the fact that there were no regulations on the subject these gentlemen clothed with this authority, with this power that we say they exercised, came down to exercise supervision, which we say is wholly without the law, but they did it, evidenced here by the fact that a man comes down and says, "You take that name of Industrial Banking off your window," and the best proof in the world is that this Department of Banking & Insurance after that act was done shows that it had no authority, because it passed an ordinance or a regulation, as is evidence in the proof here with respect to it.

Then to say that it could be inferred by the jury or by the Court that that was a false representation and made as a result of a conspiracy entered into to cheat and defraud would be preposterous, and to say that we are not bonded to the State of New Jersey flies in the face of the conclusive proof of the bond itself. Can your Honor permit a jury to say what does a $5,000 bond amount to when the Legislature has fixed that sum, when the Commissioner of Banking & Insurance would not be authorized to take more, and a bond for more would not be valid? He is not authorized to take less. It is $5,000 under the statute, and that bond we have given, and yet that is charged here in this indictment as one of the overt acts in the case that we represented falsely, and knowingly falsely, that we were under bond to the State of New Jersey.

Motion for Direction of Verdict as to other defendants.

We are charged with having made the representation that we were paying dividends, that they were being paid out of earnings annually. A very significant charge. Who says that annually we are not paying? The evidence in this case is that we have never defaulted, that we have paid every dividend, and there is no evidence in this case to the contrary. It shows that up to the time your Honor permitted us to put the proof in we had a hundred per cent. almost of reserve surplus, earned surplus, in this corporation, over and above every dividend held out, promised and paid. In the absence of any allegation anywhere in this indictment by inference or anything else that we ever represented to anybody that our business and earning power was confined to small loans, how can your Honor consider any evidence which would permit that inference? Nowhere is there any mention in this indictment that we made a false representation to that effect. So that even if there be by Mr. Angle, if I recall correctly the testimony—and again I emphasize the fact that he is merely a salesman—that he was told that we were earning our dividend out of small loan profits; it would be utterly irrelevant and immaterial for the reason that there is no allegation in the indictment charging us with it. So that taking that overt act as a whole in its import the salient allegations there, it seems to me, that we represented this to be a preferred cumulative six per cent. stock on which was payable annually dividends at the rate of six per cent. with a participation, that that was a false pretense and we knew it to be false, and it stands before your Honor affirmatively proven and uncontradicted and uncontradictable that we were under the

supervision of the Department of Banking & Insurance, so that, your Honor, if that were alone and a jury found that that was false, your Honor would be obliged to set any verdict aside founded on that as a false pretense and overt act. That we were bonded to the State of New Jersey is here affirmatively proved. That we paid dividends and that our annual dividends are paid out of earnings is affirmatively established here. Therefore I say that that overt act in its entirety must fall, because the proof is affirmatively to the contrary.

Number three; that on the 1st day of July and on other days, and so forth, all the defendants did falsely pretend and represent to divers persons that the preferred stock of the Universal Finance Corporation had a real and actual value of fourteen dollars or more per share, whereas in truth and in fact as the said defendants all of them well knew the stock did not have a real and actual value of fourteen dollars or more per share, and that by means of such false pretenses they did sell to divers persons unknown stock for fourteen dollars or more per share and did obtain therefor money in excess of five thousand dollars.

Assuming for the sake of argument, your Honor, that this stock did not have a real or actual value of fourteen dollars or more per share, where can you find evidence to support that statement as having been made, and I take it that where a pretense, a representation is alleged, that representation must be proved with the strictest adherence to the language. You can't say, it seems to me, that, "Oh, no, there is no proof in this case that any one of these defendants made that as a representation to any-

body who bought this stock, but taking the literature and radio talk and character of the business as a whole it is a fair inference that some one, John Smith from whom we have not heard, bought stock for fourteen dollars or more concluding that that was the representation made by radio talk or by something else. It seems to me we must be able to put our finger on testimony in this case that there was a representation made that this stock had a real and actual value of fourteen dollars or more.

The testimony in this case throughout is that this is a fine investment, and there are all kinds, I think they are called puffings as to comparative value of investments and how many per cent. fail and how many stand up and all that kind of thing, but what is the purpose of this as an investment? The man that bought at fourteen dollars, isn't he getting dividends at the rate of twelve on par? Isn't that an investment for a man who has money in the bank, as in this case, at four per cent.? Is there anything in this case where anybody would be permitted by any inference to say there is any danger to this corporation? Isn't it all intact, this money? Isn't it all earnings? Hasn't it been shown that the enthusiastic spirit of the public is making money for these stockholders? Isn't it a marvelous showing from the evidence in this case that from $10,000 in June up to $101,000 in the month of December, despite the fact that this company had to get going, that it had to get its organization, that it had to become known, that it was impeded in its progress and there it is, and no one can say, no one would dare to say that this is not a good investment so far as anything in this evidence goes. No one says here nor intimates

that there is a loan that is not good. No one here says or intimates that the policy in handling the loan business has not been efficient, conscientious, thorough and effective. It is an investment. That is what it was held out to be. That is what it is. That is what the proof shows; and how can men be guilty of a conspiracy who give to a campaign stock for fourteen dollars a share which on its face says that it is only a six per cent. cumulative preferred stock which has a participating right up to fifty per cent. and is getting twelve per cent. on his investment? With the fact written there that it is par, is there any obligation on anyone who is engaged in trade or industry first to educate a customer so as to make sure that the customer has the advantage of him? Does the automobile salesman have to go out and show his customer every other car that might be better before he can sell him a car? Isn't it the same thing with a stock in the absence of a fraud, and the fraud in this case must be a fraud alleged in the indictment.

Number four. Four and five are, of course, the crux of the indictment, for the reason that there are the two persons named. I am quite certain that if this indictment had come before your Honor without either one of these overt acts or allegations that some person had been defrauded, your Honor would not have permitted the State to proceed at least until it had furnished a bill of particulars of the divers unknown persons. I am making no criticism. The proof in this case shows with the books of this company in the hands of the Prosecutor, that there were ninety per cent. of the one hundred eight stockholders in the State of New Jersey, in the

County of Essex, in the City of Newark. Where are the unknown persons, and therefore we come to this: That we falsely pretended to Joseph Armour that this preferred stock was worth eighteen dollars whereas in truth and in fact, as we well knew, it did not have a value of fifteen dollars, and that by color and means of false pretenses all of these defendants obtained $150 from Armour. Your Honor will recall the testimony as to Armour. It is perfectly obvious that Mr. Armour was not deceived.

Mr. Armour came here in the middle of July, and he heard the talk over the radio, that shares were represented to him as being sold for fifteen dollars, and that they had a six per cent. dividend and that that was being increased to ten per cent. He saw Mr. Cawthorne on this and he bought it with the express representation, buying ten shares offered to him, with a six per cent. dividend increased maybe he says to ten per cent. The facts of course are that on June 14th we declared it. He says he was mentioned that Mr. Dewi T. Evans was a very honorable gentleman and was connected with the Attorney General's Office. That may be a very interesting comment for a jury. That may be very dangerous to a defendant before a jury, but surely that cannot affect a defendant before your Honor. That it was perfectly clear that is the representation from all these comments, perfectly clear, and he repeats that phrase here as in this case that it is that clear. As to Mr. Armour, it is the last of the overt acts. Let me revert to Number Four. We are charged with having by means of false pretenses obtained this money from this man. This man did not say so. Let me point out to your Honor how dangerous

it is to permit a jury to roam at large with the liberties of these defendants.

We come now to Mr. Harmeyer. Mr. Harmeyer, I believe in absolute good faith and honesty had not a complaint to make. He comes here and tells us that he heard us over the radio on May 1, 1928. I am not holding him down to May 1st, but I am holding him down to a date before when his contract was signed. He heard over the radio that we were offering stock on a ten per cent. basis. It is not so. He bought his stock at fourteen. We never were on a ten per cent. basis. Every scintilla in this case proves to the contrary, that there never was a representation made and the stock was held at fourteen. Well, he says here, and he is supposed to be a man who was defrauded, and he comes here to tell us the means by which he was defrauded, yet, he is utterly wrong in the fact, because his subscription was the 5th of May and there was no action taken and there isn't a particle of evidence to support that and everything in the case negatives it and yet it is given, in my opinion, in the utmost good faith by Mr. Harmeyer. That is the man who is one of the two who comes before this Court in this indictment said to have actually been brought here personna, said to be actually cheated and defrauded by these conspirators, and your Honor is asked on such overt acts to permit this case to go to a jury.

It seems to me your Honor, and there is one point left, if your Honor desires the argument, and that is the question of dividends. I do not know just exactly what position the State is in, whether the State says that was criminal, the method of declaring these dividends and that whether they did it in good faith or bad judg-

ment, or how they did it proves an effective act of conspiracy to cheat and defraud entered into. If your Honor wants to hear argument on that point I will ask your Honor to listen to Mr. Hobart on it, because he is the man who prepared the brief on that point, but I do not think that I would do justice to these defendants without stating to this Court that you have sat here and ruled in this case, and I believe ruled in the utmost fairness, differing though we did on some of the points as put in evidence, I feel that an appeal to your Honor under the solemnity under which a Court is, that the performance of its duty, irrespective of any public howl or clamor for victims, there can be no higher duty before the law and before God than the exercise of courage and conscience to do justice according to the strict letter of the law and in that spirit I pray your Honor that you will take into consideration the arguments that have been made here, in order that the liberties of these defendants may not be jeopardized unwarrantedly and that your Honor may not have put upon you a part of the burden, which belongs to you, and which I believe, when your Honor, that your Honor has the courage and the integrity to assume and not put upon the jury when the liberties of these defendants might be jeopardized unwarrantedly; therefore I ask your Honor to direct a verdict of acquittal as to all the defendants, on the ground that the State has failed to make out the kind of a case beyond a reasonable doubt, which would permit this jury to bring in a verdict of guilty as charged, if your Honor left that duty to them.

The Court: Do you want to be heard, Mr. Hobart?

Mr. Hobart: Just for a few minutes, but your Honor may want to adjourn.

The Court: What is it, on the question of the payment of a dividend out of the surplus?

Mr. Vickers: And then out of potential assets and rights and unpaid, unacquired interest payments.

The Court: There is no allegation that all these constitute a criminal act.

Mr. Hobart: It is hardly worthwhile to discuss then.

Mr. Vickers: I did not know what the attitude of the State was, what they would say those earnings were or not.

The Court: Whether the capital surplus, as you describe it is earnings, or whether these various indictments testified to—

Mr. Vickers: Yes.

The Court: I do not think it is material, under the present state of the law. I conceive the law in that regard to be most unsettled to the balance in this Court's notion on the sound judgment that they may have paid out of surplus set up as a result of the differences between the market price and the acquisition price. I think that that is sufficiently supported in the Old Dominion Copper Company case and the Good Enough Letter case.

Mr. Hobart: That is just the point. I do not want to take the time to discuss it, if you see it that way.

Mr. Conlon: It will be very difficult for me to answer unless I answer in detail, because of the fact by the very state of the proof it is a conspiracy as a whole or not. If your Honor wants me to do that I will be glad to do it.

Motion for Direction of Verdict as to other defendants.

The Court: I think that the question is sufficiently open to warrant its presentation to the jury.

I will deny the motion to direct for the defendants.

Counsel for defendants pray an exception to this ruling of the Court.

Exception allowed. Let it be sealed, and it is signed and sealed accordingly.

DANIEL J. BRENNAN,
Judge.

(At one o'clock P. M. the Court takes a recess for one hour.)

After Recess.

Mr. Hobart sums up the case in behalf of the defendants.

Mr. Vickers sums up the case in behalf of the defendants.

Mr. Conlon sums up the case in behalf of the State.

COURT'S CHARGE TO JURY.

The Court charges the jury as follows:

BRENNAN, *J.*

Gentlemen of the Jury:

The three defendants, Alexander G. Edwards, Dale D. Hollenbaugh and Dewi T. Evans stand charged upon an indictment for conspiracy. There was originally impleaded with them Walter F. Cawthorne and Charles Perry, with reference to whom you have returned a verdict of not guilty at the Court's direction and with whom of course you have no concern for the purposes of consideration now.

I want to outline first to you the respective functions of the Court and jury in the trial of a case of this character.

The Court is the judge of the law, and as such his function is to instruct the jury on all questions of law arising in the trial and to inform the jury of the law governing the case. It is the duty of the jury to follow the law as it may be stated by the Court. The Court has no power to decide or to instruct the jury how to decide the questions of fact. The jury are the sole and final judges of the facts, the weight of the testimony, the credibility of the witnesses, inferences to be drawn from the evidence, all inferences, issues and questions of fact whatever, including the ultimate conclusion of guilty or not guilty to be reached upon all the evidence in the case.

As judges of the facts, it is your function and responsibility and duty to recollect what the evidence is, and all the evidence, the occurrences during the trial, the appearance, conduct and demeanor of the witnesses, whether the evidence is or is not in the case, and whether it is disputed

or undisputed, and be controlled by your own recollection. If the Court at any time makes any statement of its recollection of the testimony in regard to any such matters and this does not coincide with your recollection; it is your duty to disregard the expressed recollection of the Court and to be bound by your own recollection, because you are, as I have indicated, the sole judges of the facts. The Court has a right to comment on the evidence, but in deciding the case the jury must do so not only on the evidence referred to by the Court, but on all the evidence. The Court has also the right, if it sees fit, to express its opinion on the evidence, pointing out what evidence or circumstances seem to be salient, controlling or persuasive, and indicating any inference or conclusion of that fact which it would or may draw from the whole or parts of the evidence. The jury are not bound thereby and may disregard that, or any such expression if they see fit.

The defendants are presumed to be innocent, and must be proven guilty beyond a reasonable doubt of the crime charged, and in all of its elements. The burden of so proving the defendants guilty rests upon the State throughout the whole case and never shifts.

Reasonable doubt is not a mere possible doubt. It is that state of the case where, after an examination and consideration of all the evidence, you cannot say that you have an abiding conviction to a moral certainty of the guilt of the defendants.

These defendants, Edwards, Hollenbaugh and Evans, as I have indicated to you, come before you charged upon an indictment to cheat and defraud the public generally, and certain members specifically named in the indictment. This indictment you may take with you to the jury room

and have the opportunity to examine. In that connection the Court desires to draw your attention to that section of the Crimes Act relating to conspiracy, so far as it is applicable to this case. The section reads as follows:

> "Any two or more persons, who shall combine, unite, confederate, conspire or bind by oath, covenant, agreement or other alliance * * * to cheat and defraud any person of any property by any means which are in themselves criminal, shall, on conviction, be deemed guilty of a conspiracy, but no agreement to commit any crime other than arson, burglary, manslaughter, murder, rape, robbery, or sodomy, shall be deemed a conspiracy unless some act in execution of such agreement be done to effect the object thereof by one or more of the parties to such agreement."

Before any of the defendants in this case can be convicted the jury must be satisfied beyond a reasonable doubt that at least two of them are guilty of a conspiracy to cheat and defraud some person of property by means which are in themselves criminal. Unless the jury are so satisfied, the defendants must be acquitted.

The charge in this indictment is conspiracy. It is not necessary that the conspiracy be consummated; that is, that there be accomplished the acts finally designed to be actually accomplished. Conspiracy is a combination of persons to effect a criminal object, or a lawful object by criminal means. There must be two or more persons involved or there can be no conspiracy, for one cannot conspire with himself alone. No formal agreement is necessary. The parties do not have to get together and say, "We will cheat" or "We

will defraud." It is sufficient if the minds of the conspirators meet understandingly to bring about an intelligent and deliberate agreement to do the act.

Nor is it necessary to prove the conspiracy by direct evidence. It may be inferred from the circumstances, in fact, from the nature of the case. Proof of a conspiracy must generally be circumstantial. It is seldom that any one act taken by itself, standing alone, can be seen as tending to prove conspiracy. When taken in connection with other acts, its tendency to prove the fact may be more clearly discerned. We may be satisfied from circumstances attending a series of criminal or wrongful acts, that they have resulted from concerted and associated action, although if those circumstances were considered separately it would not show confederation; but where linked together, circumstances that are in themselves in conclusion may, taken as a whole, show that apparently isolated acts spring from a common object and have in view the promotion of a common purpose. In other words if it can be proven that the defendants, by mutual agreement pursued by their acts the same unlawful object, one performing one part and another another part of the same so as to complete it, with a view to the attainment of the object, the jury will be justified in the conclusion that they were engaged in a conspiracy to effect that object, and all who with the knowledge of the fact, concur therein and aid in the execution thereof, are fellow conspirators; and the act of one pursuant to such conspiracy becomes the act of all until the conspiracy is complete or comes to naught.

It is not controlling whether the conspirators succeed or fail in the attainment of the object of their agreement. The crime is complete when the

agreement is reached and an attempt to carry it into effect is made by an overt act.

An accused may be convicted of the highest crime known to law by circumstantial evidence, but the first inquiry in an issue resting upon circumstantial evidence or partly upon circumstantial evidence is whether the facts sworn to, as distinguished from any conclusion you may draw from them, are satisfactorily proven beyond a reasonable doubt. This involves a consideration of the credibility of witnesses, which may be decided, among other things, by their demeanor, appearance, accuracy of observation and memory. And in the next place, assuming the facts sworn to by the witnesses are so satisfactorily proven, the further inquiry arises, which the jury must consider and decide, whether the facts are explained or explainable on any other reasonable hypothesis except that of guilt. If the facts so proved are, in the opinion of the jury, explainable on any reasonable hypothesis other than that of guilt, then the accused are entitled to an acquittal. If they are not explainable to the jury on any other hypothesis than that of guilt, then the jury may decide, taking into consideration all the facts and circumstances, that they warrant a conviction, subject to the proviso, as I have already stated, that the jury is already satisfied under all the facts and circumstances of the guilt of the defendants beyond a reasonable doubt as reasonable doubt has been defined to you by the Court.

Circumstantial evidence, cautiously dealt with in conformity with the legal principles I have stated, is frequently regarded as the most satisfactory proof that jurors can rely on.

An indictment of itself is no proof of guilt. It is a step in the cause necessary to bring it before you in the trial of a defendant.

There has been evidence introduced of the previous good character of the defendants, and in that connection I want to say to you that evidence of the good character or reputation of an accused is always competent in the trial of an issue such as this, and is entitled by the jury to consideration in making up their verdict, and if, on such consideration, there exists a reasonable doubt, even though that doubt is engendered merely by previous good repute, the defendants are entitled to an acquittal.

Now, what does the State say with reference to the guilt of these defendants? What does it adduce in proof of that fact, and what do these defendants say? I will rehearse just as briefly as I can, gentlemen, because I appreciate the care and the patience with which you have listened over a long period during very trying weather.

The State says that these gentlemen caused to be incorporated this company and some other companies in connection therewith, a history of which you are familiar with. It appears that originally in March of 1928, about March 23rd, there was a corporation formed known as the Public Service Finance Company. It was what is known as a small loan company, with which you gentlemen are doubtless familiar. As an accompaniment of that and at about the same time or nearly the same time, a man named Edwards organized the Public Service Sales Company. That was the trade name, he testified. The Public Service Finance Corporation had a capital of 30,000 shares of stock. Twenty-five thousand of it was preferred at a par value of ten dollars and five thousand was common stock without par

value. There was an offering of this stock to the public, first by the Public Service Sales Company so-called, and then by another corporation to which I will advert, which was really the successor as a selling agent of the Public Service Sales Company. Because of the similarity of names between Public Service Finance Company and the Public Service Corporation, a corporation of great size and tremendous activity throughout the State, complaint arose by the Public Service Corporation and the Public Service Finance Company was required or consented to discard the use of that name and adopted in its place the name of the Universal Finance Corporation. As an accompaniment of that corporation, if you will, or as a successor of the Public Service Sales Company, there was formed the Financial Investment Company or corporation. That was the selling agent for the Universal Finance Corporation.

There was a campaign for the sale of the stock of the Public Service Finance Company and later Universal Finance Corporation. In this campaign there was literature of various kinds sent around to the public generally, and there were broadcast certain radio talks and there were other activities in connection with the promotion of the sale of the stock. The State contends that some of these representations were fraudulent and that the public thereby, and certain members of it, were induced to buy the stock; that there were representations that the stock was worth more than it actually was in fact by reason of the assets of the corporation; that dividends were paid not out of the earnings of the company; that it was represented to the public generally that dividends were paid out of earnings and that these earnings resulted from the small loan business.

There was literature of one kind and another and a series of situations arose. Among other things, there was the inquiry by a broadcasting company as to the propriety of some of these offers of broadcast, some of the material that was to be sent over the radio. There was testimony that one of the officers of this corporation, the Financial Investment Company, was then an employee of the Attorney General's office. He sent a letter to a man named Hollenbaugh, who was promoting the sale of the stock, who was also an officer, if my recollection is correct, of the Universal Finance Corporation, as a sort of recommendation that these representations might be made, having been previously made in connection with another loan company with which Hollenbaugh was interested or in which he was interested in so far as sales promotion was concerned. Evans was an employee of the Attorney General's office. The letter purported to come from the Attorney General's office. Whether it did in fact or whether he had such authority my recollection is does not appear.

There were representations, as I have indicated, that all the dividends were paid out of earnings, representations that the corporation was licensed and bonded by the State of New Jersey. Some of those representations were true in part. Some may or may not have been true. Some of them were false. There is no question but that the company was licensed and bonded by the State of New Jersey. It had to get a license to engage in the small loan business as a condition precedent to that or a condition subsequent or immediate. It had to file a bond in the amount of $5,000. Of course that bond was conditioned for obedience to the regulations of the department in the small loan business. The li-

cense given was to conduct a small loan business. There was no general supervision by the State department, as there is of banks and similar financial institutions, although there may have been on the part of individuals mentioned in that regard outside the line of their duties.

The questions which arise in connection with these representations are whether or not they were false in fact to the knowledge of the people representing them and made with the intent that they be acted on and acted on by the public and individuals in that connection. I might represent that I was bonded by a certain official to do a certain thing, or I might have created a situation where I raised the plain inference that I was bonded in every regard. What did the public understand? What inferences could be drawn from the representations made? Those things are all fact questions for you to decide. They are all in the province of your determination of the facts or the inferences to be drawn from the facts.

The State says by its expert accountant that they at no time had any net income to warrant the payment of dividends, no basis for the representations generally that they were paying dividends out of income; and it appears plain that there was no income sufficient from the small loan business to pay dividends. That is my recollection. If yours is otherwise, as I say, you discard mine and be bound by your own, as you are the judges of the facts.

The defendants in their own behalf present, as I have indicated, evidence of their previous good repute in the communities in which they severally reside. They say that no representation was made by them which was false in fact,

nor did they make any attempt to cheat or defraud or misrepresent to the public. Mr. Evans, who was an officer of one of the corporations and actively in charge of financial matters, apparently in his testimony says, and it appears as well in the testimony of some of the others, that in his and their judgment there was sufficient money to pay the dividend when a dividend was paid in June, and he and they justify that from figures which he says make it sufficient. Then they deny these representations. They have figures at great length which I will not rehearse, to which you gentlemen have listened, which you can analyze and from which you can draw such deductions as you see fit within the limitations I have indicated.

The State on one side contends that those various representations over the radio and the representations as to not only the earning capacity but as to actual earning performance and the sources of it were representations fraudulent in character and were acted on by the public. The defendants say, "No. We made no fraudulent representations. We felt we were earning what we said we were. We did not cheat. We did not defraud." It is for you gentlemen to say, within the limitations that I have indicated, what was the fact, whether they did or did not. If you feel they did or at least that two or more of them did, they should be convicted. If your judgment is to the contrary, they should be acquitted.

I have been requested by counsel for the defendants to charge certain requests.

1. "Before any of the defendants can be convicted the jury must be satisfied, beyond a reasonable doubt, that at least two of them are guilty of a conspiracy in manner and form as alleged

in the indictment; and unless the jury so find then all the defendants must be acquitted."

I so charge you.

No. 2. I decline to charge, except as I have charged you.

No. 3. I decline to charge except as I have charged you.

No. 4. I decline to charge except as I have charged you.

No. 5. I decline to charge except as I have charged you.

No. 6. "In considering the question whether the State has proved beyond a reasonable doubt the allegations of the indictment, the jury are limited to the specific charges therein, namely, that the defendants conspired to cheat and defraud by making public sale by means of false pretenses of certain stock, therein mentioned, at a price which was fictitious and above the actual and market value." I so charge.

6a. "In order to constitute the crime of conspiracy, it is not enough that the defendants, or some two or more of them, have made an agreement to do certain things; it must be shown that the motives of the confederates were corrupt; and unless the State has shown beyond a reasonable doubt that there was an actual criminal intention, the defendants must be acquitted." I so charge.

The seventh I decline to charge.

8. "The jury are instructed that by the allegation of the indictment, that the defendants conspired to sell the stock therein mentioned at a price which was above the actual and market value, the State charges that the stock was sold at a price above the actual and market value, and that in order to determine this question there

must be proof of the actual and market value, so that there may be a basis of comparison between such value and the price at which the stock was sold; unless the jury find beyond a reasonable doubt, that the stock was in fact sold at a price which was above the actual and market value, the defendants must be acquitted." I so charge.

The ninth I decline to charge.

The tenth I decline to charge.

The eleventh I decline to charge, having I believe, sufficiently charged it.

The twelfth I decline to charge, having sufficiently charged it.

The thirteenth I decline to charge except as I have charged you.

The fourteenth I decline to charge except as I have charged you.

15. "The evidence shows affirmatively that Public Service Finance Corporation, later known as Universal Finance Corporation, was under the supervision of the Department of Banking and Insurance of the State of New Jersey, in accordance with the provisions of Chapter 49, New Jersey Laws of 1914." I so charge.

16. "There is no evidence to sustain the allegation in the indictment that the preferred stock therein mentioned, of Public Service Finance Corporation, later known as Universal Finance Corporation, was not preferred stock upon which was payable cumulative dividends at the rate of 6 per cent. annually, participating in 50 per cent. of the net earnings of said corporation." I so charge.

17. "The allegation in the indictment is that the defendants or some of them caused dividends to be paid to the holders of preferred stock of

Universal Finance Corporation, although the same had not theretofore been earned by the corporation; the jury are instructed that in considering whether this allegation has been sustained, they must take into consideration not only the earnings of the corporation from the so-called Small Loan Business, but also all other earnings as shown by the evidence." I so charge.

18. "The jury are instructed that Public Service Finance Corporation, later known as Universal Finance Corporation, was regularly incorporated in accordance with the General Corporation Laws of this State; under such laws the directors are authorized to declare dividends, either from the corporation's surplus or from the net profits arising from the business of the corporation." I so charge you.

19. "Under the Corporation Laws of this State, the jury are instructed that the directors of any corporation organized thereunder, have the right to determine in their discretion, what, if any, dividends shall be declared and paid to stockholders out of the surplus or net profits of the corporation." I so charge.

No. 20 I decline to charge.

No. 21 I decline to charge.

No. 22 I decline to charge.

23. "In so far as relates to the payment of dividends, the jury are instructed that the evidence shows, without dispute, that all dividends to preferred stockholders, were in fact paid at the rates mentioned in the resolutions declaring the same, to wit, at the rate of ten per cent. per annum as declared in June, September and December of 1928, and later at the rate of twelve per cent. per annum, beginning in January, 1929." I so charge.

24. "The jury are instructed that if they find that the defendants Evans and Hollenbaugh (and the other directors of the Universal Finance Corporation) declared dividends in good faith, in the belief that they were authorized to do so under the corporation laws of this State, then such finding negatives any corrupt intent on the part of the said defendants, in declaring such dividends." I so charge.

I will charge No. 25 with the excision of Mr. Cawthorne's name, he now being out of the case.

25. "If the jury find that the defendant represented to the public in good faith that the preferred stock of Public Service Finance Corporation, later known as Universal Finance Corporation was on a ten per cent. dividend basis (that is, a payment of dividends at the rate of ten per cent. per year) then such finding negatives any corrupt intent on the part of such defendant in making such representation." I so charge.

The twenty-sixth I decline to charge except as I have already charged you.

Now, gentlemen, you have as I have indicated, listened very patiently. Yours is a very solemn responsibility in this case. It means a great deal to the State. It means a great deal to the defendants. That responsibility now rests with you as to the determination of the issue. The case is now in your hands. You may retire.

Counsel for the defendants prays a general exception to the charge of the Court.

Exception allowed; let it be sealed, and it is sealed and signed accordingly.

DANIEL J. BRENNAN,
Judge.

Counsel for the defendants prays an exception to the Court's refusal to charge such requests to charge as the Court declined to charge.

Exception allowed; let it be sealed, and it is sealed and signed accordingly.

DANIEL J. BRENNAN,
Judge.

DEFENDANTS' REQUESTS TO CHARGE.

1. Before any of the defendants can be convicted the jury must be satisfied, beyond a reasonable doubt, that at least two of them are guilty of a conspiracy in manner and form as alleged in the indictment; and unless the jury so find then all the defendants must be acquitted.

2. The section of the Crimes Act relating to Conspiracy so far as it is applicable to this case, reads as follows:

> "Any two or more persons, who shall combine, unite, confederate, conspire, or bind by oath, covenant, agreement or other alliance, * * * to cheat and defraud any person of any property by any means which are in themselves criminal, shall, on conviction, be deemed guilty of a conspiracy, but no agreement to commit any crime other than arson, burglary, manslaughter, murder, rape, robbery, or sodomy shall be deemed a conspiracy unless some act in execution of such agreement be done to effect the object thereof by one or more of the parties to such agreement."

3. Before any of the defendants can be convicted, the jury must be satisfied beyond a rea-

sonable doubt, that at least two of them are guilty of a conspiracy to cheat and defraud some person of property, by means which are in themselves criminal; unless the jury are so satisfied the defendants must be acquitted.

4. The indictment charges that the defendants conspired and agreed together to cheat and defraud persons to the Grand Jurors unknown, by making public sale, by means of false pretenses of the preferred stock of the Public Service Finance Corporation (later known as the Universal Finance Corporation) at a price which was fictitious and above the actual and market value thereof; this charges a conspiracy to cheat and defraud by the criminal means of false pretenses. Unless the jury find beyond a reasonable doubt that at least two of the defendants are guilty of such a conspiracy, then the defendants must be acquitted.

5. The mere fact that any two or more of the defendants combined, united, confederated or conspired to cheat and defraud any person of property by means which are in themselves criminal is not sufficient in this case to justify a verdict of guilty against the defendants or any of them; before the defendants or any two of them can be found guilty the jury must be satisfied beyond a reasonable doubt not only that two or more of the defendants combined, united, confederated or conspired to cheat and defraud some person of property by criminal means but they must also be satisfied beyond a reasonable doubt that some act in execution of such agreement was done to effect the object thereof by one or more of the parties thereto; and unless the jury so find, the defendants must be acquitted.

6. In considering the question whether the State has proved beyond a reasonable doubt the allegations of the indictment, the jury are limited to the specific charges therein, namely, that the defendants conspired to cheat and defraud by making public sale by means of false pretenses of certain stock, therein mentioned, at a price which was fictitious and above the actual and market value.

6a. In order to constitute the crime of conspiracy, it is not enough that the defendants, or some two or more of them, have made an agreement to do certain things; it must be shown that the motives of the confederates were corrupt; and unless the State has shown beyond a reasonable doubt that there was an actual criminal intention, the defendants must be acquitted.

7. The jury are instructed that by the allegation of the indictment, that the defendants conspired to sell the stock therein mentioned, at a price which was fictitious, the State charges that the price was non-existent; and unless the jury so find beyond a reasonable doubt, the defendants must be acquitted.

8. The jury are instructed that by the allegation of the indictment, that the defendants conspired to sell the stock therein mentioned at a price which was above the actual and market value, the State charges that the stock was sold at a price above the actual and market value, and that in order to determine this question, there must be proof of the actual and market value, so that there may be a basis of comparison between such value and the price at which the stock was sold; unless the jury find beyond a reasonable doubt, that the stock was in fact sold at a price

which was above the actual and market value, the defendants must be acquitted.

9. There is no evidence in this case that these defendants or any of them made public sale of any preferred stock at a fictitious price.

10. There is no evidence in this case that these defendants or any of them made any false pretenses of the actual value of the stock sold.

11. Under the statute of this State, every person, firm, corporation or association, engaged in this State in the business of loaning money in the sum of $300.00 or less amounts, is required to procure a license to conduct such business from the Commissioner of Banking and Insurance of this State; it appears without dispute in this case that Public Service Finance Corporation, later known as Universal Finance Corporation, did procure such a license from said Commissioner. (Chap. 49 P. L. 1914.)

12. Under said statute, the applicant for such license is required to execute and file a bond to the State of New Jersey in the sum of $5,000 with the Commissioner of Banking and Insurance to be approved by him for the faithful observance of all laws relating to such business. The evidence in this case is that such bond was executed and filed as required by the statute.

13. There is no evidence to sustain the allegation in the indictment that Universal Finance Corporation was not under bond to the State of New Jersey.

14. There is no evidence to sustain the allegation in the indictment that Public Service Finance Corporation, later known as Universal Finance Corporation, was not under the supervision of the

Department of Banking and Insurance of the State of New Jersey.

15. The evidence shows affirmatively that Public Service Finance Corporation, later known as Universal Finance Corporation, was under the supervision of the Department of Banking and Insurance of the State of New Jersey, in accordance with the provisions of Chapter 49, New Jersey Laws of 1914.

16. There is no evidence to sustain the allegation in the indictment that the preferred stock therein mentioned, of Public Service Finance Corporation, later known as Universal Finance Corporation, was not preferred stock upon which was payable cumulative dividends at the rate of six per cent. annually, participating in fifty per cent. of the net earnings of said corporation.

17. The allegation in the indictment is that the defendants or some of them caused dividends to be paid to the holders of preferred stock of Universal Finance Corporation, although the same had not theretofore been earned by the corporation; the jury are instructed that in considering whether this allegation has been sustained, they must take into consideration not only the earnings of the corporation from the so-called Small Loan Business, but also all other earnings as shown by the evidence.

18. The jury are instructed that Public Service Finance Corporation, later known as Universal Finance Corporation, was regularly incorporated in accordance with the General Corporation Laws of this State; under such laws the directors are authorized to declare dividends, either from the corporation's surplus or from the net profits arising from the business of the corporation.

Defendants' Requests to Charge.

19. Under the corporation laws of this State, the jury are instructed that the directors of any corporation organized thereunder, have the right to determine in their discretion, what, if any, dividends shall be declared and paid to stockholders out of the surplus or net profits of the corporation.

20. The dividend declared on June 14, 1928, was lawfully so declared out of the surplus or net profits in accordance with the corporation laws of this State.

21. The dividend declared in September, 1928, was lawfully so declared out of the surplus or net profits in accordance with the corporation laws of this State.

22. The dividend declared in December, 1928, was lawfully so declared out of the surplus or net profits, in accordance with the corporation laws of this State.

23. In so far as relates to the payment of dividends, the jury are instructed that the evidence shows, without dispute, that all dividends to preferred stockholders, were in fact paid at the rates mentioned in the resolutions declaring the same, to wit, at the rate of ten per cent. per annum as declared in June, September and December of 1928, and later at the rate of twelve per cent. per annum, beginning in January, 1929.

24. The jury are instructed that if they find that the defendants Evans and Hollenbaugh (and the other directors of the Universal Finance Corporation) declared dividends in good faith, in the belief that they were authorized to do so under the corporation laws of this State, then such finding negatives any corrupt intent

on the part of the said defendants, in declaring such dividends.

25. If the jury find that the defendant Edwards represented to the public in good faith that the preferred stock of Public Service Finance Corporation, later known as Universal Finance Corporation was on a ten per cent. dividend basis (that is, a payment of dividends at the rate of ten per cent. per year) then such finding negatives any corrupt intent on the part of such defendant in making such representation.

26. Unless the jury find, beyond a reasonable doubt, that at least two of the defendants are guilty of a conspiracy to cheat and defraud some person of property, by criminal means as alleged in the indictment, the defendants must be acquitted. By a reasonable doubt is meant that state of the case which after the entire comparison and consideration of the evidence, leaves the minds of the jurors in that condition that they cannot say they feel an abiding conviction to a moral certainty of the truth of the charge.

CERTIFICATE OF STENOGRAPHER.

ESSEX COUNTY COURT OF QUARTER SESSIONS.

THE STATE OF NEW JERSEY, *vs.* ALEXANDER G. EDWARDS, DALE D. HOLLENBAUGH, DEWI T. EVANS, *Defendants.*	*On Indictment for Conspiracy.* *Certificate of Stenographer.*

I, ALAN A. KENNISH, the stenographer who reported the above entitled cause, do hereby certify that the foregoing pages constitute a true and correct transcript of said cause, tried before Honorable Daniel J. Brennan, Judge of the Essex County Court of Quarter Sessions on May 27, 28, 29, 31 and June 4, 5, 6, 1929.

ALAN A. KENNISH, (Signed)
Stenographer.

Dated: July 3, 1929.

CERTIFICATE OF JUDGE.

ESSEX COUNTY COURT OF QUARTER SESSIONS.

STATE OF NEW JERSEY, *vs.* ALEXANDER G. EDWARDS, DALE D. HOLLENBAUGH, DEWI T. EVANS, WALTER F. CAWTHORNE and CHARLES PERRY.	*On Indictment No.* 280 *for Conspiracy.*

I, DANIEL J. BRENNAN, Judge of the Essex County Court of General Quarter Sessions and the Judge who presided over the aforesaid cause, do hereby certify that the above printed book contains the entire record of the proceedings had upon the trial of said cause on May 27, 28, 29, 31 and June 3, 4, 5 and 6, and that the same is returned by the plaintiff in error therein, with the writ of error, bringing up the bill of exceptions, signed and sealed, in this cause.

DANIEL J. BRENNAN, (Signed)
Presiding Judge of the Essex County Court of General Quarter Sessions.

Dated: July 3, 1929.

ASSIGNMENT OF ERRORS.

Served and filed August 19, 1929.

NEW JERSEY SUPREME COURT

STATE OF NEW JERSEY, *Defendant-in-Error,* *vs.* ALEXANDER G. EDWARDS, DALE D. HOLLENBAUGH, DEWI T. EVANS, *Plaintiffs-in-Error.*	*On Writ of Error.* *Assignment of Errors.*

Afterwards, to wit, on the nineteenth day of July, 1929, before our said Supreme Court of the State of New Jersey, come the said Alexander G. Edwards, by Hobart & Minard, his attorneys, and the said Dale D. Hollenbaugh and Dewi T. Evans, by George T. Vickers, their attorney, and say that:

In the record and proceedings aforesaid, had upon the trial of the issue so joined between the State of New Jersey and the said Alexander G. Edwards, Dale D. Hollenbaugh and Dewi T. Evans, and also in the matters recited and contained in said bill of exceptions and also in giving the judgment aforesaid there is manifest error in the following particulars, to wit:

1. The Court received in evidence over the objection of the defendants a certain pamphlet or prospectus referred to by the witness Alfred J. Hargan and marked Exhibit S. 1.

2. The Court received in evidence over the objection of the defendants a certain pamphlet

or prospectus referred to by the witness Alfred J. Hargan and marked Exhibit S. 2.

3. The Court received in evidence over the objection of the defendants a certain pamphlet or prospectus referred to by the witness Alfred J. Hargan and marked Exhibit S. 3.

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4. The Court received in evidence over the objection of the defendants a certain form letter without date, referred to by the witness Alfred J. Hargan and marked Exhibit S. 4.

5. The Court permitted, over the objection of the defendants, the witness, Richard C. Plumer, a witness produced on the part of the State, to answer the following question:

"Q What were your duties?"

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6. The Court received in evidence, over the objection of the defendants, a certain letter, referred to by the witness, Richard C. Plumer, addressed to the defendant, Dale D. Hollenbaugh, from the defendant, Dewi T. Evans, dated March 29, 1928, and marked Exhibit S. 10.

7. The Court received in evidence, over the objection of the defendants, a certain letter, referred to by the witness, Richard C. Plumer, addressed to Station W. A. B. C. from the defend-

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ant, Dewi T. Evans, dated May 25, 1928, and marked Exhibit S. 11.

8. The Court refused to permit counsel for the defendants, on cross examination of the witness, Joseph S. Armour, to ask the following question:

"Q When did you receive the next dividend? You say you received two more. Was it sometime about the middle of March of this year?"

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9. The Court refused to permit counsel for the defendants, on cross examination of the witness, Joseph S. Armour, to show the date when two later dividends were received by said witness.

10. The Court refused to permit counsel for the defendants, on cross examination of the witness, Joseph S. Armour, to ask the following question:

"Q Do you consider that you were in any way deceived when you received—"

11. The Court refused to permit counsel for the defendants, on cross examination of the witness, Joseph S. Armour, to ask the following question:

"Q Have you any kick coming—"

12. The Court refused to permit counsel for the defendants, on cross examination of the witness, Henry Harmeyer, to ask the following question:

"Q And on all of these subscriptions you have received the dividends represented by anyone connected with this company which the stock was paying—that it would bear, is that right?"

13. The Court permitted, over the objection of the defendants, the witness, Frank Hurley, a witness produced on the part of the State, to answer the following question:

"Q You mean when they re-opened after the Chancery proceeding?"

14. The Court permitted, over the objection of the defendants, the witness, Frank Hurley, a witness produced on the part of the State, to answer the following question:

"Q What do you mean 'when the corporation reopened again'?"

15. The Court refused to permit counsel for the defendants, on cross examination of the witness, John Thomas, to ask the following question:

"Q Since that time you have received checks purporting to be dividend checks on these various subscriptions?"

16. The Court received in evidence, over the objection of the defendants, certain letters, referred to by the witness, John Gellrich, and marked Exhibit S. 18.

17. The Court permitted, over the objection of the defendants, the witness, Lawrence Rehack, a witness produced on the part of the State, to answer the following question:

"Q Or what percentage of that?"

18. The Court permitted, over the objection of the defendants, the witness, Julius H. Cohn, a witness produced on the part of the State, to answer the following question:

"Q Were the dividends that were paid as of June 30, 1928, by the Universal Finance Corporation paid out of the earnings of the company?"

19. The Court permitted, over the objection of the defendants, the witness, Julius H. Cohn, a witness produced on the part of the State, to answer the following question:

"Q Was or was not the dividend which was paid to the preferred stockholders of the Universal Finance Corporation as of September 30th, paid out of the earnings of the company?"

20. The Court refused to permit counsel for the defendants, on cross examination of the wit-

ness, Julius H. Cohn, to ask the following question:

"Q At the time you testified on your direct examination you knew that the securities, stock purchased and held by this company, bought out of the moneys of the stockholders, had increased to a value of more than $25,000, isn't that so?

The Court: As of when?

Q Up to the 30th day of March, 1929."

21. The Court refused to permit counsel for the defendants, on cross examination of the witness, Julius H. Cohn, to ask the following question:

"Q Can you tell this Court and jury whether there was a single stock which the directors of the company purchased out of the moneys of these stockholders which did not appreciate in value and was sold at a profit at the time of the sale which you considered?"

22. The Court refused to permit counsel for the defendants, on cross examination of the witness, Julius H. Cohn, to ask the following question:

"Q Under the contract in this case the deferred charge was consonant with the terms of the contract which was before you at the time you made your investigation, isn't that so?"

23. The Court refused to permit counsel for the defendants, on cross examination of the witness, Arthur D. Clark, to ask the following question:

"Q Was there any representation made to you by Edwards or Hollenbaugh or any other members of this company as to whether or not that letter had been authorized by the Attorney General of the State of New Jersey, or by any of his assistants?"

24. The Court refused to permit counsel for the defendants, on direct examination of the witness, Richard J. Fitzmaurice, to ask the following question:

"Q Those figures included the surplus and net profits officially issued. Then was that a proper action by your board?"

25. The Court refused to receive in evidence, when offered by the defendants, the original papers filed in the Court of Chancery of this State in a certain suit in said Court between Edward L. Katzenbach, Attorney General of the State of New Jersey, complainant, and Universal Finance Corporation and Financial Investment Corporation, defendants.

26. The Court refused to receive in evidence, when offered by the defendants, the original papers filed in the Court of Chancery of this State in a certain suit in said Court between Samuel Klein, complainant, and Universal Finance Corporation, defendant.

27. The Court refused to receive in evidence, when offered by the defendants, a certain letter dated November 26, 1928, addressed "To Whom It May Concern," and signed Parker W. Silzer, Ass't Vice President (of New Jersey National Bank & Trust Company) and marked Exhibit D. 22 for identification.

28. The Court permitted counsel for the State, over the objection of the defendants, on cross examination of the defendant, Alexander G. Edwards, to ask the following question:

"Q Was there something in the neighborhood of fourteen or fifteen thousand dollars paid out to them?"

29. The Court permitted counsel for the State, over the objection of the defendants, on cross ex-

amination of the defendant, Alexander G. Edwards, to ask the following question:

"Q During that period, then, there was paid to those sources, yourself, Florida Realty Company, in which you are interested, T. P. Edwards, Mrs. A. G. Edwards, Mrs. T. P. Edwards and Belle Edwards a total of those amounts, which is about $38,000, is that correct?"

30. The Court permitted counsel for the State, over the objection of the defendants, on cross examination of the defendant, Alexander G. Edwards, to ask the following question:

"Q It is a fact, isn't it, Mr. Edwards, that there was paid from those sources of the Financial Investment Corporation something in the neighborhood of $38,000?"

31. The Court permitted counsel for the State, over the objection of the defendants, on cross examination of the defendant, Alexander G. Edwards, to ask the following question:

"Q Was any information given to the public at any time by the sales force as to the amount of money the Universal Finance Corporation had invested in stocks?"

32. The Court refused to receive in evidence, when offered by the defendants, a certain photograph marked Exhibit D. 25 for identification.

33. The Court refused to permit counsel for the defendants, on direct examination of the defendant, Dale D. Hollenbaugh, to ask the following question:

"Q Being Exhibit S. 10. Now, then, what has the course been taken by you with respect to the Department of Securities or Mr. Evans' department, whatever you want to call it, in your previous broadcasting of this other loan company?"

34. The Court refused to permit counsel for the defendants, on direct examination of the defendant, Dale D. Hollenbaugh, to ask the following question:

"Q What part of the subscription contract was it that Mr. Collis objected to?"

35. The Court permitted counsel for the State, over the objection of the defendants, on cross examination of the defendant, Dale D. Hollenbaugh, to ask the following question:

"Q Do you know whether or not up to the 30th day of June, eliminating everything from your consideration, except the business of making small loans, whether or not the income from that business was sufficient to pay a dividend of $1,200?"

36. The Court permitted counsel for the State, over the objection of the defendants, on cross examination of the defendant, Dale D. Hollenbaugh, to ask the following question:

"Q Do you know whether the gross income was more than the expense, that is the gross income of the loan business alone?"

37. The Court permitted counsel for the State, over the objection of the defendants, on cross examination of the defendant, Dale D. Hollenbaugh, to ask the following question:

"Q Now, as to the period ending September 30th—was the dividend then which amounted to some $2,500, did that exceed the amount earned by the company in the small loan business?"

38. The Court permitted counsel for the State, over the objection of the defendants, on cross examination of the defendant, Dale D. Hollenbaugh, to ask questions tending to show that the dividends declared by Universal Finance Corporation exceeded the amount earned by said corporation in the small loan business.

39. The Court refused to permit counsel for the defendants, on re-direct examination of the defendant, Dale D. Hollenbaugh, to ask the following question:

> "Q Do you know whether or not now the corporation is paying twelve per cent. dividends?"

40. The Court refused to receive in evidence, when offered by the defendants, a certain letter dated November 26, 1928, addressed "To Whom It May Concern," and signed Parker W. Silzer, Ass't Vice President (of New Jersey National Bank & Trust Company) and marked Exhibit D. 22 for identification.

41. The Court refused to permit counsel for the defendants, on direct examination of the witness, Charles Perry, to ask the following question:

> "Q Did you ever conspire with Alexander G. Edwards or Dale D. Hollenbaugh or Dewi T. Evans or Walter F. Cawthorne in manner and form as alleged in this indictment, namely, to cheat divers persons, and so forth?"

42. The Court refused to permit counsel for the defendants, on direct examination of the defendant, Walter F. Cawthorne, to ask the following question:

> "Q Mr. Cawthorne, on the 28th day of March, 1928, and thereafter to the 30th day of March, 1929, did you agree with Mr. Alexander G. Edwards, Dale D. Hollenbaugh, Dewi T. Evans, or Charles Perry, or any of them, to make public sales by means of false pretenses of preferred stock of Public Service Finance Corporation, later known as the Universal Finance Corporation, at a price that was fictitious and above the actual and market value?"

43. The Court refused to permit counsel for the defendants, on direct examination of the defendant, Walter F. Cawthorne, to ask the following question:

"Q Did you at any time between March 28, 1928, and March 30, 1929, agree with Alexander G. Edwards, Dale D. Hollenbaugh, Dewi T. Evans, or Charles Perry or with any or either of them to make public sale by means of false pretenses of preferred stock of Public Service Finance Corporation or of Universal Finance Corporation at a price that was fictitious and above the actual market value?"

44. The Court refused to permit counsel for the defendants, on direct examination of the defendant, Walter F. Cawthorne, to ask the following question:

"Q Did you at any time during the dates previously mentioned agree with the persons previously mentioned, or enter into an agreement with the gentlemen previously mentioned, or with any or either of them to defraud any person, known or unknown, by means of false pretenses?"

45. The Court refused to permit counsel for the defendants, on direct examination of the defendant, Dewi T. Evans, to ask the following question:

"Q Can you tell this Court and jury whether on the difference between approximately $180,000 of which you spoke and the $50,000 remaining on the 30th day of March, 1929, the corporation realized a loss or a profit?"

46. The Court refused to permit counsel for the defendants, on direct examination of the defendant, Dewi T. Evans, to ask the following question:

"Q At the time of the writing of this letter, S. 10, what did you mean by the state-

ment 'Your plans will meet with the approval of this office' contained in the last paragraph?''

47. The Court refused to permit counsel for the defendants, on direct examination of the defendant, Dewi T. Evans, to ask the following question:

''Q Did you write the letter with any such purpose?''

48. The Court refused to permit counsel for the defendants, on direct examination of the defendant, Dewi T. Evans, to ask the following question:

''Q Now then as to the dividend declared as of the close of March 30, 1929, payable on April 2nd, if that is the correct date, what did you and the directors do regarding that and what figure did you arrive at?''

49. The Court refused to permit counsel for the defendants, on direct examination of the defendant, Dewi T. Evans, to ask the following question:

''Q Was the dividend provided for out of the earnings of the company to the amount of twelve per cent. as contained in the resolution of the Board of Directors under date of December 5, 1928?''

50. The Court refused to permit counsel for the defendants, on direct examination of the defendant, Dewi T. Evans, to ask the following question:

''Q Did your corporation pay that dividend out of earnings, or not?''

51. The Court refused to permit counsel for the defendants to prove the financial condition of the Universal Finance Corporation as of March 30, 1929, for the purpose of proving the

actual value of the stock alleged to have been fraudulently sold with the intent to cheat and defraud divers persons, according to the terms of the indictment, between the 28th day of March, 1928, and the date of the inquisition, which is March 30, 1929, and to prove this by a balance sheet, a part of the records of the corporation, which balance sheet is furnished by Haskins & Sells, the accountants, and certified to by them.

52. The Court refused to permit counsel for the defendants to prove from the records of the treasurer (the defendant, Dewi T. Evans) while said treasurer was on the witness stand, that on March 30, 1929, said corporation had surplus earnings over and above the dividends declared on December 5, 1928, and in March, 1929, and in addition to all of the dividends previously paid out of earnings of the company.

53. The Court refused to permit counsel for the defendants to prove that on March 30, 1929, according to the books of the corporation and the balance sheet prepared by Haskins & Sells, there was a surplus arising from premiums on sales of preferred capital stock of the amount of $20,371.25; that there was a profit and loss surplus of $21,374.22, making a total of $41,745.47 and that deducted from their dividends previously declared on preferred capital stock during the nine months ending March 30, 1929, in the sum of $13,607.29, there was a balance of $28,138.18 and for the period referred to that includes the dividend of $1,208.75, which to obtain the net profit and loss should be added to the sum of $13,607.29.

54. The Court refused to receive in evidence the balance sheet of Universal Finance Corpora-

tion as of March 30, 1929, marked Exhibit D. 31 for identification.

55. The Court refused to permit counsel for the defendants, on direct examination of the witness, Dewi T. Evans, to ask the following question:

> "Q Now as of January 31st?" (referring to the loan balance of Universal Finance Corporation of January 31, 1929.)

56. The Court refused to permit counsel for the defendants, on direct examination of the witness, Dewi T. Evans, to ask the following question:

> "Q Now, then, do not answer this question until the Court directs you to. Was there in fact such application made prior to March 30, 1929?"

57. The Court permitted counsel for the State, over the objection of the defendants, on cross examination of the defendant, Dewi T. Evans, to ask the following question:

> "Q All right. Let us take that up, but before we take up the profits from the sale of securities, the situation was that up to the 30th of September this company neither did nor was it possible in the manner in which it was doing business to show a profit of ten per cent., eliminating what profit was made on the sale of securities? Isn't that correct?"

58. The Court permitted counsel for the State, over the objection of the defendants, on cross examination of the defendant, Dewi T. Evans, to ask the following question:

> "Q So isn't it a fact that the only thing during the period up to December 30th that you could depend upon to pay dividends at the rate of ten per cent. a year, was such profits as you might make on stock sales?"

59. The Court permitted counsel for the State, over the objection of the defendants, on cross examination of the defendant, Dewi T. Evans, to ask the following question:

"Q Did you learn from Haskins & Sells on September 27th or a day or two after that, that there was an operating loss for the period ending June 30th?"

60. The Court refused to permit counsel for the defendants, on the re-direct examination of the witness, Dewi T. Evans, to ask the following question:

"Q Up to the time of the newspaper notoriety that has been referred to and the raid as it has been called by the Prosecutor of the Pleas of Essex County, had any complaint come to you from any of the 1,600 stockholders and subscribers, if that is the correct number, with respect to any representations made by you, or anyone on behalf of your corporation?"

61. The Court refused to permit counsel for the defendants, on the re-direct examination of the witness, Dewi T. Evans, to ask the following question:

"Q In the memorandum that you say you had before the Board of Directors in the meeting of June 14th, on that day you owed the Broad & Market National Bank $80,000, is that correct?"

62. The Court permitted, over the objection of the defendants, the witness Julius Cohn, a witness produced by the State, to answer the following question:

"Q Can you give it to me as of November 30th?"

63. The Court permitted, over the objection of the defendants, the witness Julius Cohn, a wit-

ness produced by the State, to answer the following question:

"Q Let me have it?"

64. The Court refused to permit counsel for the defendants, on cross examination of the witness, Julius Cohn, to ask the following question:

"Q Is it not a fact that according to your method of accountancy neither the depreciation nor appreciation of stocks or securities actually held may be shown either way in your balance sheet?"

65. The Court erroneously denied the motion made by plaintiffs-in-error at the close of the State's case, to dismiss the indictment; whereas said motion should have been granted on one or more of the following grounds:

(a) The evidence is insufficient to prove any conspiracy to which these defendants were a party.

(b) If any conspiracy is proved it is not the conspiracy alleged in the indictment.

(c) The evidence is insufficient to prove any of the overt acts alleged in the indictment.

(d) The evidence is insufficient to prove that any of the defendants, including those I represent, were guilty of the charge alleged in the indictment beyond a reasonable doubt.

66. The Court erroneously denied the motion made by the plaintiffs-in-error at the close of the entire case, to direct a verdict of not guilty as to the said plaintiffs-in-error, and each of them, on the following grounds:

(a) The evidence is insufficient to prove any conspiracy to which these defendants were a party.

(b) If any conspiracy is proved it is not the conspiracy alleged in the indictment.

(c) The evidence is insufficient to prove any of the overt acts alleged in the indictment.

(d) The evidence is insufficient to prove that any of the defendants, including those I represent, were guilty of the charge alleged in the indictment beyond a reasonable doubt.

(e) It now appears by affirmative evidence that the State has failed to make out a prima facie case.

(f) It now appears that the State has failed to make out a case which, as a matter of law, would warrant the court in sending the case to the jury, on the assumption that if a verdict of guilty were reached the Court could say that the jury had evidence, beyond a reasonable doubt, of the conspiracy charged in the indictment.

(g) The State has failed to prove any of the overt acts as charged in the indictment.

67. The Court refused to charge the fourth request of the defendants, reading as follows:

"The indictment charges that the defendants conspired and agreed together to cheat and defraud persons to the Grand Jurors unknown, by making public sale, by means of false pretenses of the preferred stock of the Public Service Finance Corporation (later known as the Universal Finance Corporation) at a price which was fictitious and above the actual and market value thereof; this charges a conspiracy to cheat and defraud by the criminal means of false pretenses. Unless the jury find beyond a reasonable doubt that at least two of the defendants are guilty of such a conspiracy, then the defendants must be acquitted."

68. The Court refused to charge the fifth request of the defendants, reading as follows:

"The mere fact that any two or more of the defendants combined, united, confederated or conspired to cheat and defraud any

person of property by means which are in themselves criminal is not sufficient in this case to justify a verdict of guilty against the defendants or any of them; before the defendants or any two of them can be found guilty the jury must be satisfied beyond a reasonable doubt not only that two or more of the defendants combined, united, confederated or conspired to cheat and defraud some person of property by criminal means but they must also be satisfied beyond a reasonable doubt that some act in execution of such agreement was done to affect the object thereof by one or more of the parties thereto; and unless the jury so find, the defendants must be acquitted."

69. The Court refused to charge the seventh request of the defendants, reading as follows:

"The jury are instructed that by the allegation of the indictment, that the defendants conspired to sell the stock therein mentioned, at a price which was fictitious, the State charges that the price was non-existent; and unless the jury so find beyond a reasonable doubt, the defendants must be acquitted."

70. The Court refused to charge the ninth request of the defendants, reading as follows.

"There is no evidence in this case that these defendants or any of them made public sale of any preferred stock at a fictitious price."

71. The Court refused to charge the tenth request of the defendants, reading as follows:

"There is no evidence in this case that these defendants or any of them made any false pretenses of the actual value of the stock sold."

72. The Court refused to charge the eleventh request of the defendants, reading as follows:

"Under the statute of this State, every person, firm, corporation or association, en-

gaged in this State in the business of loaning money in the sum of $300.00 or less amounts, is required to procure a license to conduct such business from the Commissioner of Banking and Insurance of this State; it appears without dispute in this case that Public Service Finance Corporation, later known as Universal Finance Corporation, did procure such a license from said Commissioner. (Chap. 49, P. L. 1914.)"

73. The Court refused to charge the twelfth request of the defendants, reading as follows:

"Under said statute, the applicant for such license is required to execute and file a bond to the State of New Jersey in the sum of $5,000, with the Commissioner of Banking and Insurance to be approved by him for the faithful observance of all laws relating to such business. The evidence in this case is that such bond was executed and filed as required by the statute."

74. The Court refused to charge the thirteenth request of the defendants, reading as follows:

"There is no evidence to sustain the allegation in the indictment that Universal Finance Corporation was not under bond to the State of New Jersey."

75. The Court refused to charge the fourteenth request of the defendants, reading as follows:

"There is no evidence to sustain the allegation in the indictment that Public Service Finance Corporation, later known as Universal Finance Corporation, was not under the supervision of the Department of Banking and Insurance of the State of New Jeresy."

76. The Court refused to charge the twentieth request of the defendants, reading as follows:

"The dividend declared on June 14, 1928, was lawfully so declared out of the surplus

or net profits in accordance with the corporation laws of this State."

77. The Court refused to charge the twenty-first request of the defendants, reading as follows:

"The dividend declared in September 1928, was lawfully so declared out of the surplus or net profits in accordance with the corporation laws of this State.

78. The Court refused to charge the twenty-second request of the defendants, reading as follows:

"The dividend declared in December 1928 was lawfully so declared out of the surplus or net profits, in accordance with the corporation laws of this State."

79. The Court erroneously charged the jury as follows:

"There was a campaign for the sale of the stock of the Public Service Finance Company and later Universal Finance Corporation. In this campaign there was literature of various kinds sent around to the public generally, and there were broadcast certain radio talks and there were other activities in connection with the promotion of the sale of the stock. The State contends that some of these representations were fraudulent and that the public thereby, and certain members of it, were induced to buy the stock; that there were representations that the stock was worth more than it actually was in fact by reason of the assets of the corporation; that dividends were paid not out of the earnings of the company; that it was represented to the public generally that dividends were paid out of earnings and that these earnings resulted from the small loan business."

80. The Court erroneously charged the jury as follows:

"There was literature of one kind and another and a series of situations arose. Among other things, there was the inquiry by a broadcasting company as to the propriety of some of these offers of broadcast, some of the material that was to be sent over the radio. There was testimony that one of the officers of this corporation, the Financial Investment Company, was then an employe of the Attorney General's office. He sent a letter to a man named Hollenbaugh, who was promoting the sale of the stock, who was also an officer, if my recollection is correct, of the Universal Finance Corporation, as a sort of recommendation that these representations might be made, having been previously made in connection with another loan company with which Hollenbaugh was interested or in which he was interested in so far as sales promotion was concerned. Evans was an employe of the Attorney General's office. The letter purported to come from the Attorney General's office. Whether it did in fact or whether he had such authority my recollection is does not appear."

81. The Court erroneously charged the jury as follows:

"There were representations, as I have indicated, that all the dividends were paid out of earnings; representations that the corporation was licensed and bonded by the State of New Jersey. Some of these representations were true in part. Some may or may not have been true. Some of them were false."

82. The Court erroneously charged the jury as follows:

"The license given was to conduct a small loan business. There was no general supervision by the State department, as there is of banks and similar financial institutions, although there may have been on the part of

individuals mentioned in that regard outside the line of their duties."

83. The Court erroneously charged the jury as follows:

"The questions which arise in connection with these representations are whether or not they were false in fact to the knowledge of the people representing them and made with the intent that they be acted on, and acted on by the public and individuals in that connection. I might represent that I was bonded by a certain official to do a certain thing, or I might have created a situation where I raised the plain inference that I was bonded in every regard. What did the public understand? What inference could be drawn from the representations made? Those things are all fact questions for you to decide. They are all in the province of your determination of the facts or the inferences to be drawn from the facts."

84. The Court erroneously charged the jury as follows:

"The State says by its expert accountant that they at no time had any net income to warrant the payment of dividends, no basis for the representation generally that they were paying dividends out of income; and it appears plain that there was no income sufficient from the small loan business to pay dividends. That is my recollection. If yours is otherwise, as I say, you discard mine and be bound by your own, as you are the judges of the facts."

85. The Court erroneously charged the jury as follows:

"Mr. Evans, who was an officer of one of the corporations and actively in charge of financial matters, apparently in his testimony says, and it appears as well in the testimony of some of the others, that in his and their judgment there was sufficient money to pay

the dividend when a dividend was paid in June, and he and they justify that from figures which he says make it sufficient. Then they deny these representations. They have figures at great length which I will not rehearse, to which you gentlemen have listened, which you can analyze and from which you can draw such deductions as you see fit within the limitations I have indicated."

86. The Court erroneously charged the jury as follows:

"The State on one side contends that those various representations over the radio and the representations as to not only the earning capacity but as to actual earning performance and the sources of it were representations fraudulent in character and were acted on by the public. The defendants say, 'No. We made no fraudulent representations. We felt we were earning what we said we were. We did not cheat. We did not defraud.' It is for you gentlemen to say, within the limitations that I have indicated, what was the fact, whether they did or did not. If you feel they did or at least that two or more of them did, they should be convicted. If your judgment is to the contrary, they should be acquitted."

87. The verdict was against the weight of the evidence.

WHEREFORE, the plaintiffs-in-error, Alexander G. Edwards, Dale D. Hollenbaugh and Dewi T. Evans, pray that because of the said errors and of other errors appearing in the record and proceedings, and in the giving of judgment in said cause, the said judgment may be reversed, annulled and for nothing holden, and that said plain-

tiffs-in-error may be restored to all things that they have lost by reason thereof.

HOBART & MINARD,
Attorneys of Alexander G. Edwards,
Plaintiffs-in-Error.

GEORGE T. VICKERS,
Attorney of Dale D. Hollenbaugh and
Dewi T. Evans, Plaintiffs-in-Error.

Service acknowledged this 19th day of July, 1929.

JOSEPH L. SMITH,
Prosecutor of Essex County.

(Former joinder filed.)

SPECIFICATION OF CAUSES FOR REVERSAL.

Served and filed August 19, 1929.

NEW JERSEY SUPREME COURT.

STATE OF NEW JERSEY, *Defendant-in-Error,* *vs.* ALEXANDER G. EDWARDS, DALE D. HOLLENBAUGH, DEWI T. EVANS, *Plaintiffs-in-Error.*	*On Writ of Error.* *Specification of Causes for Reversal.*

And now come the said plaintiff-in-error, Alexander G. Edwards, by Hobart & Minard, his attorneys, and the said plaintiffs-in-error, Dale D. Hollenbaugh and Dewi T. Evans, by George T. Vickers, their attorney, having caused the entire record of the proceedings had upon the trial to be certified and returned with this writ of error, and says that in the record and proceedings aforesaid had upon the trial of the said issue so joined between the State of New Jersey and said Alexander G. Edwards, Dale D. Hollenbaugh and Dewi T. Evans, and also in the matters recited and contained in said bill of exceptions, and also in giving the judgment aforesaid, the plaintiffs-in-error suffered manifest wrong and injury and hereby specify the following causes upon which they rely for the reversal of said judgment.

1. The Court received in evidence over the objection of the defendants a certain pamphlet or prospectus referred to by the witness Alfred J. Hargan and marked Exhibit S. 1.

Specification of Causes for Reversal.

2. The Court received in evidence over the objection of the defendants a certain pamphlet or prospectus referred to by the witness Alfred J. Hargan and marked Exhibit S. 2.

3. The Court received in evidence over the objection of the defendants a certain pamphlet or prospectus referred to by the witness Alfred J. Hargan and marked Exhibit S. 3.

4. The Court received in evidence over the objection of the defendants a certain form letter without date, referred to by the witness Alfred J. Hargan and marked Exhibit S. 4.

5. The Court permitted, over the objection of the defendants, the witness, Richard C. Plumer, a witness produced on the part of the State, to answer the following question:

"Q What were your duties?"

6. The Court received in evidence, over the objection of the defendants, a certain letter, referred to by the witness, Richard C. Plumer, addressed to the defendant, Dale D. Hollenbaugh, from the defendant, Dewi T. Evans, dated March 29, 1928, and marked Exhibit S. 10.

7. The Court received in evidence, over the objection of the defendants, a certain letter, referred to by the witness, Richard C. Plumer, addressed to Station W. A. B. C. from the defendant, Dewi T. Evans, dated May 25, 1928, and marked Exhibit S. 11.

8. The Court refused to permit counsel for the defendants, on cross examination of the witness, Joseph S. Armour, to ask the following question:

"Q When did you receive the next dividend? You say you received two more. Was

New Jersey State Library

it sometime about the middle of March of this year?''

9. The Court refused to permit counsel for the defendants, on cross examination of the witness, Joseph S. Armour, to show the date when two later dividends were received by said witness.

10. The Court refused to permit counsel for the defendants, on cross examination of the witness, Joseph S. Armour, to ask the following question:

''Q Do you consider that you were in any way deceived when you received—''

11. The Court refused to permit counsel for the defendants, on cross examination of the witness, Joseph S. Armour, to ask the following question:

''Q Have you any kick coming—''

12. The Court refused to permit counsel for the defendants, on cross examination of the witness, Henry Harmeyer, to ask the following question:

''Q And on all of these subscriptions you have received the dividends represented by anyone connected with this company which the stock was paying—that it would bear, is that right?''

13. The Court permitted, over the objection of the defendants, the witness, Frank Hurley, a witness produced on the part of the State, to answer the following question:

''Q You mean when they re-opened after the Chancery proceeding?''

14. The Court permitted, over the objection of the defendants, the witness, Frank Hurley, a

witness produced on the part of the State, to answer the following question:

"Q What do you mean 'when the corporation reopened again'?"

15. The Court refused to permit counsel for the defendants, on cross examination of the witness, John Thomas, to ask the following question:

"Q Since that time you have received checks purporting to be dividend checks on these various subscriptions?"

16. The Court received in evidence, over the objection of the defendants, certain letters, referred to by the witness, John Gellrich, and marked Exhibit S. 18.

17. The Court permitted, over the objection of the defendants, the witness, Lawrence Rehack, a witness produced on the part of the State, to answer the following question:

"Q Or what percentage of that?"

18. The Court permitted, over the objection of the defendants, the witness, Julius H. Cohn, a witness produced on the part of the State, to answer the following question:

"Q Were the dividends that were paid as of June 30, 1928, by the Universal Finance Corporation paid out of the earnings of the company?"

19. The Court permitted, over the objection of the defendants, the witness, Julius H. Cohn, a witness produced on the part of the State, to answer the following question:

"Q Was or was not the dividend which was paid to the preferred stockholders of the Universal Finance Corporation as of September 30th, paid out of the earnings of the company?"

20. The Court refused to permit counsel for the defendants, on cross examination of the witness, Julius H. Cohn, to ask the following question:

"Q At the time you testified on your direct examination you knew that the securities, stock purchased and held by this company, bought out of the moneys of the stockholders, had increased to a value of more than $25,000, isn't that so?

The Court: As of when?

Q Up to the 30th day of March, 1929."

21. The Court refused to permit counsel for the defendants, on cross examination of the witness, Julius H. Cohn, to ask the following question:

"Q Can you tell this Court and jury whether there was a single stock which the directors of the company purchased out of the moneys of these stockholders which did not appreciate in value and was sold at a profit at the time of the sale which you considered?"

22. The Court refused to permit counsel for the defendants, on cross examination of the witness, Julius H. Cohn, to ask the following question:

"Q Under the contract in this case the deferred charge was consonant with the terms of the contract which was before you at the time you made your investigation, isn't that so?"

23. The Court refused to permit counsel for the defendants, on cross examination of the witness, Arthur D. Clark, to ask the following question:

"Q Was there any representation made to you by Edwards or Hollenbaugh or any other members of this company as to whether or not that letter had been author-

ized by the Attorney General of the State of New Jersey, or by any of his assistants?"

24. The Court refused to permit counsel for the defendants, on direct examination of the witness, Richard J. Fitzmaurice, to ask the following question:

"Q Those figures included the surplus and net profits officially issued. Then was that a proper action by your Board?"

25. The Court refused to receive in evidence, when offered by the defendants, the original papers filed in the Court of Chancery of this State in a certain suit in said Court between Edward L. Katzenbach, Attorney General of the State of New Jersey, complainant, and Universal Finance Corporation and Financial Investment Corporation, defendants.

26. The Court refused to receive in evidence, when offered by the defendants, the original papers filed in the Court of Chancery of this State in a certain suit in said Court between Samuel Klein, complainant, and Universal Finance Corporation, defendant.

27. The Court refused to receive in evidence, when offered by the defendants, a certain letter dated November 26, 1928, addressed "To Whom It May Concern," and signed Parker W. Silzer, Ass't Vice President (of New Jersey National Bank & Trust Company) and marked Exhibit D. 22 for identification.

28. The Court permitted counsel for the State, over the objection of the defendants, on cross examination of the defendant, Alexander G. Edwards, to ask the following question:

"Q Was there something in the neighborhood of fourteen or fifteen thousand dollars paid out to them?"

29. The Court permitted counsel for the State, over the objection of the defendants, on cross examination of the defendant, Alexander G. Edwards, to ask the following question:

"Q During that period, then, there was paid to those sources, yourself, Florida Realty Company, in which you were interested, T. P. Edwards, Mrs. A. G. Edwards, Mrs. T. P. Edwards and Belle Edwards a total of those amounts, which is about $38,000, is that correct?"

30. The Court permitted counsel for the State, over the objection of the defendants, on cross examination of the defendant, Alexander G. Edwards, to ask the following question:

"Q It is a fact, isn't it, Mr. Edwards, that there was paid from those sources of the Financial Investment Corporation something in the neighborhood of $38,000?"

31. The Court permitted counsel for the State, over the objection of the defendants, on cross examination of the defendant, Alexander G. Edwards, to ask the following question:

"Q Was any information given to the public at any time by the sales force as to the amount of money the Universal Finance Corporation had invested in stocks?"

32. The Court refused to receive in evidence, when offered by the defendants, a certain photograph marked Exhibit D. 25 for identification.

33. The Court refused to permit counsel for the defendants, on direct examination of the defendant, Dale D. Hollenbaugh, to ask the following question:

"Q Being Exhibit S. 10. Now, then, what has the course been taken by you with respect to the Department of Securities or Mr. Evans' department, whatever you want to call it, in your previous broadcasting of this other loan company?"

34. The Court refused to permit counsel for the defendants, on direct examination of the defendant, Dale D. Hollenbaugh, to ask the following question:

"Q What part of the subscription contract was it that Mr. Collis objected to?"

35. The Court permitted counsel for the State, over the objection of the defendants, on cross examination of the defendant, Dale D. Hollenbaugh, to ask the following question:

"Q Do you know whether or not up to the 30th day of June, eliminating everything from your consideration, except the business of making small loans, whether or not the income from that business was sufficient to pay a dividend of $1,200?"

36. The Court permitted counsel for the State, over the objection of the defendants, on cross examination of the defendant, Dale D. Hollenbaugh, to ask the following question:

"Q Do you know whether the gross income was more than the expense, that is the gross income of the loan business alone?"

37. The Court permitted counsel for the State, over the objection of the defendants, on cross examination of the defendant, Dale D. Hollenbaugh, to ask the following question:

"Q Now, as to the period ending September 30th—was the dividend then which amounted to some $2,500, did that exceed the amount earned by the company in the small loan business?"

38. The Court permitted counsel for the State, over the objection of the defendants, on cross examination of the defendant, Dale D. Hollenbaugh, to ask questions tending to show that the dividends declared by Universal Finance Corporation exceeded the amount earned by said corporation in the small loan business.

39. The Court refused to permit counsel for the defendants, on re-direct examination of the defendant, Dale D. Hollenbaugh, to ask the following question:

"Q Do you know whether or not now the corporation is paying twelve per cent. dividends?"

40. The Court refused to receive in evidence, when offered by the defendants, a certain letter dated November 26, 1928, addressed "To Whom It May Concern," and signed Parker W. Silzer, Ass't Vice President (of New Jersey National Bank & Trust Company) and marked Exhibit D. 22 for identification.

41. The Court refused to permit counsel for the defendant, on direct examination of the witness, Charles Perry, to ask the following question:

"Q Did you ever conspire with Alexander G. Edwards or Dale D. Hollenbaugh or Dewi T. Evans or Walter F. Cawthorne in manner and form as alleged in this indictment, namely, to cheat divers persons, and so forth?"

42. The Court refused to permit counsel for the defendants, on direct examination of the defendant, Walter F. Cawthorne, to ask the following question:

"Q Mr. Cawthorne, on the 28th day of March, 1928, and thereafter to the 30th day of March, 1929, did you agree with Mr. Alexander G. Edwards, Dale D. Hollenbaugh, Dewi T. Evans, or Charles Perry, or any of them, to make public sales by means of false pretenses of preferred stock of Public Service Finance Corporation, later known as the Universal Finance Corporation, at a price that was fictitious and above the actual and market value?"

43. The Court refused to permit counsel for the defendants, on direct examination of the defendant, Walter F. Cawthorne, to ask the following question:

"Q Did you at any time between March 28, 1928, and March 30, 1929, agree with Alexander G. Edwards, Dale D. Hollenbaugh, Dewi T. Evans, or Charles Perry or with any or either of them to make public sale by means of false pretenses of preferred stock of Public Service Finance Corporation or of Universal Finance Corporation at a price that was fictitious and above the actual market value?"

44. The Court refused to permit counsel for the defendants, on direct examination of the defendant, Walter F. Cawthorne, to ask the following question:

"Q Did you at any time during the dates previously mentioned agree with the persons previously mentioned, or enter into an agreement with the gentlemen previously mentioned, or with any or either of them to defraud any person, known or unknown, by means of false pretenses?"

45. The Court refused to permit counsel for the defendants, on direct examination of the defendant, Dewi T. Evans, to ask the following question:

"Q Can you tell this Court and jury whether on the difference between approximately $180,000 of which you spoke and the $50,000 remaining on the 30th day of March, 1929, the corporation realized a loss or a profit?"

46. The Court refused to permit counsel for the defendants, on direct examination of the defendant, Dewi T. Evans, to ask the following question:

"Q At the time of the writing of this letter, S. 10, what did you mean by the state-

ment 'Your plans will meet with the approval of this office' contained in the last paragraph?"

47. The Court refused to permit counsel for the defendants, on direct examination of the defendant, Dewi T. Evans, to ask the following question:

"Q Did you write the letter with any such purpose?"

48. The Court refused to permit counsel for the defendants, on direct examination of the defendant, Dewi T. Evans, to ask the following question:

"Q Now then as to the dividend declared as of the close of March 30, 1929, payable on April 2nd, if that is the correct date, what did you and the directors do regarding that and what figure did you arrive at?"

49. The Court refused to permit counsel for the defendants, on direct examination of the defendant, Dewi T. Evans, to ask the following question:

"Q Was the dividend provided for out of the earnings of the company to the amount of twelve per cent. as contained in the resolution of the Board of Directors under date of December 5, 1928?"

50. The Court refused to permit counsel for the defendants, on direct examination of the defendant, Dewi T. Evans, to ask the following question:

"Q Did your corporation pay that dividend out of earnings, or not?"

51. The Court refused to permit counsel for the defendants to prove the financial condition of the Universal Finance Corporation as of March 30, 1929, for the purpose of proving the actual value of the stock alleged to have been

fraudulently sold with the intent to cheat and defraud divers persons, according to the terms of the indictment, between the 28th day of March, 1928, and the date of the inquisition, which is March 30, 1929, and to prove this by a balance sheet, part of the records of the corporation, which balance sheet is furnished by Haskins & Sells, the accountants, and certified to by them.

52. The Court refused to permit counsel for the defendants to prove from the records of the treasurer (the defendant, Dewi T. Evans) while said treasurer was on the witness stand, that on March 30, 1929, said corporation had surplus earnings over and above the dividends declared on December 5, 1928, and in March, 1929, and in addition to all of the dividends previously paid out of earnings of the company.

53. The Court refused to permit counsel for the defendants to prove that on March 30, 1929, according to the books of the corporation and the balance sheet prepared by Haskins & Sells, there was a surplus arising from premiums on sales of preferred capital stock of the amount of $20,371.25; that there was a profit and loss surplus of $21,374.22, making a total of $41,745.47 and that deducted from their dividends previously declared on preferred capital stock during the nine months ending March 30, 1929, in the sum of $13,607.29, there was a balance of $28,138.18 and for the period referred to that includes the dividend of $1,208.75, which to obtain the net profit and loss should be added to the sum of $13,607.29.

54. The Court refused to receive in evidence the balance sheet of Universal Finance Corporation as of March 30, 1929, marked Exhibit D. 31 for identification.

55. The Court refused to permit counsel for the defendants, on direct examination of the witness, Dewi T. Evans, to ask the following question:

> "Q Now as of January 31st?" (referring to the loan balance of Universal Finance Corporation of January 31, 1929.)

56. The Court refused to permit counsel for the defendants, on direct examination of the witness, Dewi T. Evans, to ask the following question:

> "Q Now, then, do not answer this question until the Court directs you to. Was there in fact such application made prior to March 30, 1929?"

57. The Court permitted counsel for the State, over the objection of the defendants, on cross examination of the defendant, Dewi T. Evans, to ask the following question:

> "Q All right. Let us take that up, but before we take up the profits from the sale of securities, the situation was that up to the 30th of September this company neither did nor was it possible in the manner in which it was doing business to show a profit of ten per cent., eliminating what profit was made on the sale of securities? Isn't that correct?"

58. The Court permitted counsel for the State, over the objection of the defendants, on cross examination of the defendant, Dewi T. Evans, to ask the following question:

> "Q So isn't it a fact that the only thing during the period up to December 30th that you could depend upon to pay dividends at the rate of ten per cent. a year, was such profits as you might make on stock sales?"

59. The Court permitted counsel for the State, over the objection of the defendants, on cross

examination of the defendant, Dewi T. Evans, to ask the following question:

"Q Did you learn from Haskins & Sells on September 27th or a day or two after that, that there was an operating loss for the period ending June 30th?"

60. The Court refused to permit counsel for the defendants, on the re-direct examination of the witness, Dewi T. Evans, to ask the following question:

"Q Up to the time of the newspaper notoriety that has been referred to and the raid as it has been called by the Prosecutor of the Pleas of Essex County, had any complaint come to you from any of the 1,600 stockholders and subscribers, if that is the correct number, with respect to any representations made by you, or anyone on behalf of your corporation?"

61. The Court refused to permit counsel for the defendants, on the re-direct examination of the witness, Dewi T. Evans, to ask the following question:

"Q In the memorandum that you say you had before the Board of Directors in the meeting of June 14th, on that day you owed the Broad & Market National Bank $80,000, is that correct?"

62. The Court permitted, over the objection of the defendants, the witness Julius Cohn, a witness produced by the State, to answer the following question:

"Q Can you give it to me as of November 30th?"

63. The Court permitted, over the objection of the defendants, the witness Julius Cohn, a witness produced by the State, to answer the following question:

"Q Let me have it?"

64. The Court refused to permit counsel for the defendants, on cross examination of the witness, Julius Cohn, to ask the following question:

"Q Is it not a fact that according to your method of accountancy neither the depreciation nor appreciation of stocks or securities actually held may be shown either way in your balance sheet?"

65. The Court erroneously denied the motion made by plaintiffs-in-error at the close of the State's case, to dismiss the indictment; whereas said motion should have been granted on one or more of the following grounds:

(a) The evidence is insufficient to prove any conspiracy to which these defendants were a party.

(b) If any conspiracy is proved it is not the conspiracy alleged in the indictment.

(c) The evidence is insufficient to prove any of the overt acts alleged in the indictment.

(d) The evidence is insufficient to prove that any of the defendants, including those I represent, were guilty of the charge alleged in the indictment beyond a reasonable doubt.

66. The Court erroneously denied the motion made by the plaintiffs-in-error at the close of the entire case, to direct a verdict of not guilty as to the said plaintiffs-in-error, and each of them, on the following grounds:

(a) The evidence is insufficient to prove any conspiracy to which these defendants were a party.

(b) If any conspiracy is proved it is not the conspiracy alleged in the indictment.

(c) The evidence is insufficient to prove any of the overt acts alleged in the indictment.

(d) The evidence is insufficient to prove that any of the defendants, including those

I represent, were guilty of the charge alleged in the indictment beyond a reasonable doubt.

(e) It now appears by affirmative evidence that the State has failed to make out a prima facie case.

(f) It now appears that the State has failed to make out a case which, as a matter of law, would warrant the court in sending the case to the jury, on the assumption that if a verdict of guilty were reached the Court could say that the jury had evidence, beyond a reasonable doubt, of the conspiracy charged in the indictment.

(g) The State has failed to prove any of the overt acts as charged in the indictment.

67. The Court refused to charge the fourth request of the defendants, reading as follows:

"The indictment charges that the defendants conspired and agreed together to cheat and defraud persons to the Grand Jurors unknown, by making public sale, by means of false pretenses of the preferred stock of the Public Service Finance Corporation (later known as the Universal Finance Corporation) at a price which was fictitious and above the actual and market value thereof; this charges a conspiracy to cheat and defraud by the criminal means of false pretenses. Unless the jury find beyond a reasonable doubt that at least two of the defendants are guilty of such a conspiracy, then the defendants must be acquitted."

68. The Court refused to charge the fifth request of the defendants, reading as follows:

"The mere fact that any two or more of the defendants combined, united, confederated or conspired to cheat and defraud any person of property by means which are in themselves criminal is not sufficient in this case to justify a verdict of guilty against the defendants or any of them; before the defendants or any two of them can be found guilty the jury must be satisfied beyond a

reasonable doubt not only that two or more of the defendants combined, united, confederated or conspired to cheat and defraud some person of property by criminal means but they must also be satisfied beyond a reasonable doubt that some act in execution of such agreement was done to affect the object thereof by one or more of the parties thereto; and unless the jury so find, the defendants must be acquitted."

69. The Court refused to charge the seventh request of the defendants, reading as follows:

"The jury are instructed that by the allegation of the indictment, that the defendants conspired to sell the stock therein mentioned, at a price which was fictitious, the State charges that the price was non-existent; and unless the jury so find beyond a reasonable doubt, the defendants must be acquitted."

70. The Court refused to charge the ninth request of the defendants, reading as follows.

"There is no evidence in this case that these defendants or any of them made public sale of any preferred stock at a fictitious price."

71. The Court refused to charge the tenth request of the defendants, reading as follows:

"There is no evidence in this case that these defendants or any of them made any false pretenses of the actual value of the stock sold."

72. The Court refused to charge the eleventh request of the defendants, reading as follows:

"Under the statute of this State, every person, firm, corporation or association, engaged in this State in the business of loaning money in the sum of $300.00 or less amounts, is required to procure a license to conduct such business from the Commissioner of Banking and Insurance of this State; it

appears without dispute in this case that Public Service Finance Corporation, later known as Universal Finance Corporation, did procure such a license from said Commissioner. (Chap. 49, P. L. 1914.)"

73. The Court refused to charge the twelfth request of the defendants, reading as follows:

"Under said statute, the applicant for such license is required to execute and file a bond to the State of New Jersey in the sum of $5,000, with the Commissioner of Banking and Insurance to be approved by him for the faithful observance of all laws relating to such business. The evidence in this case is that such bond was executed and filed as required by the statute."

74. The Court refused to charge the thirteenth request of the defendants, reading as follows:

"There is no evidence to sustain the allegation in the indictment that Universal Finance Corporation was not under bond to the State of New Jersey."

75. The Court refused to charge the fourteenth request of the defendants, reading as follows:

"There is no evidence to sustain the allegation in the indictment that Public Service Finance Corporation, later known as Universal Finance Corporation, was not under the supervision of the Department of Banking and Insurance of the State of New Jersey."

76. The Court refused to charge the twentieth request of the defendants, reading as follows:

"The dividend declared on June 14, 1928, was lawfully so declared out of the surplus or net profits in accordance with the corporation laws of this State."

77. The Court refused to charge the twenty-first request of the defendants, reading as follows:

> "The dividend declared in September 1928, was lawfully so declared out of the surplus or net profits in accordance with the corporation laws of this State."

78. The Court refused to charge the twenty-second request of the defendants, reading as follows:

> "The dividend declared in December 1928 was lawfully so declared out of the surplus or net profits, in accordance with the corporation laws of this State."

79. The Court erroneously charged the jury as follows:

> "There was a campaign for the sale of the stock of the Public Service Finance Company and later Universal Finance Corporation. In this campaign there was literature of various kinds sent around to the public generally, and there were broadcast certain radio talks and there were other activities in connection with the promotion of the sale of the stock. The State contends that some of these representations were fraudulent and that the public thereby, and certain members of it, were induced to buy the stock; that there were representations that the stock was worth more than it actually was in fact by reason of the assets of the corporation; that dividends were paid not out of the earnings of the company; that it was represented to the public generally that dividends were paid out of earnings and that these earnings resulted from the small loan business."

80. The Court erroneously charged the jury as follows:

> "There was literature of one kind and another and a series of situations arose. Among other things, there was the inquiry by a broadcasting company as to the pro-

priety of some of these offers of broadcast, some of the material that was to be sent over the radio. There was testimony that one of the officers of this corporation, the Financial Investment Company, was then an employe of the Attorney General's office. He sent a letter to a man named Hollenbaugh, who was promoting the sale of the stock, who was also an officer, if my recollection is correct, of the Universal Finance Corporation, as a sort of recommendation that these representations might be made, having been previously made in connection with another loan company with which Hollenbaugh was interested or in which he was interested in so far as sales promotion was concerned. Evans was an employe of the Attorney General's office. The letter purported to come from the Attorney General's office. Whether it did in fact or whether he had such authority my recollection is does not appear."

81. The Court erroneously charged the jury as follows:

"There were representations, as I have indicated, that all the dividends were paid out of earnings; representations that the corporation was licensed and bonded by the State of New Jersey. Some of these representations were true in part. Some may or may not have been true. Some of them were false."

82. The Court erroneously charged the jury as follows:

"The license given was to conduct a small loan business. There was no general supervision by the State department, as there is of banks and similar financial institutions, although there may have been on the part of individuals mentioned in that regard outside the line of their duties."

83. The Court erroneously charged the jury as follows:

"The questions which arise in connection with these representations are whether or

not they were false in fact to the knowledge of the people representing them and made with the intent that they be acted on, and acted on by the public and individuals in that connection. I might represent that I was bonded by a certain official to do a certain thing, or I might have created a situation where I raised the plain inference that I was bonded in every regard. What did the public understand? What inference could be drawn from the representations made? Those things are all fact questions for you to decide. They are all in the province of your determination of the facts or the inferences to be drawn from the facts."

84. The Court erroneously charged the jury as follows:

"The State says by its expert accountant that they at no time had any net income to warrant the payment of dividends, no basis for the representation generally that they were paying dividends out of income; and it appears plain that there was no income sufficient from the small loan business to pay dividends. That is my recollection. If yours is otherwise, as I say, you discard mine and be bound by your own, as you are the judges of the facts."

85. The Court erroneously charged the jury as follows:

"Mr. Evans, who was an officer of one of the corporations and actively in charge of financial matters, apparently in his testimony says, and it appears as well in the testimony of some of the others, that in his and their judgment there was sufficient money to pay the dividend when a dividend was paid in June, and he and they justify that from figures which he says make it sufficient. Then they deny these representations. They have figures at great length which I will not rehearse, to which you gentlemen have listened, which you can analyze and from which

you can draw such deductions as you see fit within the limitations I have indicated."

86. The Court erroneously charged the jury as follows:

"The State on one side contends that those various representations over the radio and the representations as to not only the earning capacity but as to actual earning performance and the sources of it were representations fraudulent in character and were acted on by the public. The defendants say, 'No. We made no fraudulent representations. We felt we were earning what we said we were. We did not cheat. We did not defraud.' It is for you gentlemen to say, within the limitations that I have indicated, what was the fact, whether they did or did not. If you feel they did or at least that two or more of them did, they should be convicted. If your judgment is to the contrary, they should be acquitted."

87. The verdict was against the weight of the evidence.

88. The charge of the Court as a whole, and in each and every part thereof, is illegal and thereby the plaintiffs-in-error suffered manifest wrong and injury.

89. In the entire proceedings had upon the trial of the plaintiffs-in-error, the plaintiffs-in-error suffered manifest wrong and injury in the admission and exclusion of evidence and in the charge of the Court and in the refusal to charge as requested by the plaintiffs-in-error, which prejudiced the plaintiffs-in-error in maintaining their defense upon the merits.

WHEREFORE, the plaintiffs-in-error pray that because of the said specification of causes for reversal, the said judgment may be reversed, an-

nulled and for nothing holden, and that said plaintiffs-in-error may be restored to all things that they have lost by reason thereof.

HOBART & MINARD,
Attorneys of Alexander G. Edwards,
Plaintiff-in-Error.

GEORGE T. VICKERS,
Attorney of Dale D. Hollenbaugh and Dewi T. Evans, Plaintiffs-in-Error.

Service acknowledged this 19th day of August, 1929.

JOSEPH L. SMITH,
Prosecutor of Essex County.

STATE'S EXHIBITS.

		Off'd	P't'd
S. 1.	Pamphlet or Prospectus from office of Universal Finance Corporation offering unsold balance of $750,000 of preferred stock, at a price of $15.00 per share	38	721
S. 2.	Advance Proof of Pamphlet or Prospectus from office of Universal Finance Corporation	38	729
S. 3.	Pamphlet or Prospectus from office of Financial Investment Corporation offering unsold balance of $750,000 of preferred stock, at a price of $16.00 per share	38	733
S. 4.	Form letter without date on letterhead of Financial Investment Corporation, signed by W. F. Cawthorne, Treasurer	39	742
S. 5.	Pamphlet entitled "The Treasure Chest of Modern Finance" (issue of December, 1928)	39	744
S. 6.	Photostatic copy of series of radio talks	42	755
S. 7.	Transcript of statement of Alexander Gordon Edwards, taken at Prosecutor's Office December 27, 1928	49	793
S. 8.	Statement of Walter F. Cawthorne taken at Prosecutor's Office December 27, 1928	49	812
S. 9.	Statement of Charles Perry taken at Prosecutor's Office December 27, 1928	49	823
S. 10.	Letter to Dale D. Hollenbaugh from D. T. Evans dated March 29, 1928	70	844
S. 11.	Letter to Station WABC from D. T. Evans, dated May 25, 1928	70	845
S. 12.	Duplicate subscription contract of Joseph F. Armour, dated July 20, 1928. (Same as D. 3 for Identification)	86	847
S. 13.	Pamphlet entitled "The Treasure Chest of Modern Finance" (issue of December, 1928). (Same as Exhibit S. 5)	103	848

		Off'd	P't'd
S. 14.	Three envelopes marked as one exhibit all addressed to John Thomas	111	848
S. 15.	Dividend notice, without date, received by Geo. Goetz	132	849
S. 16.	Pamphlet entitled "The Treasure Chest of Modern Finance" (issue of November, 1928)	136	850
S. 17.	Dividend notice, without date, received by Helen Pearsall. (Same in form as Exhibit S. 15)	148	862
S. 18.	Four letters received by John Gellrich	156	863
S. 19.	Stock book of Universal Finance Corporation showing issue of no par value stock	177	867
S. 20.	Stock book of Public Service Finance Corporation showing issue of no par value stock	177	869
S. 21 for Identification.	Minutes of Universal Finance Corporation of Directors' Meeting June 12, 1928	397	
S. 22 for Identification.	Report of Haskins & Sells, dated September 27, 1928		
S. 23 for Identification.	Statement of profit and loss account of Universal Finance Corporation for September and October, 1928, and for the four months ending October 31, 1928	592	

DEFENDANTS' EXHIBITS.

D. 1.	Subpoena issued to Financial Investment Corporation, dated December 18, 1928	43, 614	871
D. 2.	Subscription contract of Joseph S. Armour, dated July 20, 1928	82, 382	873
D. 3 for Identification.	Duplicate subscription contract of Joseph S. Armour, dated July 20, 1928. (Same as Exhibit S. 12)	83	874
D. 4.	Sample copy of certificate of preferred stock of Universal Finance Corporation. (Same as D. 21 for Identification)	83, 613	874

		Off'd	P't'd
D. 5.	Subscription contract of Anna MacDonald and William MacDonald, dated December 3, 1928	102, 435	877
D. 6.	Subscription contract of Frank Hurley, dated December 4, 1928	104, 436	878
D. 7.	Four subscription blanks of John Thomas, dated September 5, September 5, September 14 and September 24, 1928	112, 614	879
D. 8.	Two subscription blanks of Martin H. Gleason, dated December 1 and December 5, 1928	125, 438	883
D. 9.	Subscription contract of Geo. Goetz—without date	135, 614	885
D. 10.	Subscription contract of George R. Tennent, dated December 4, 1928	138, 456	886
D. 11.	Two subscription contracts of Helen Eva Pearsall, dated October 15 and December 12, 1928	149, 446	887
D. 12.	Bond of Public Service Finance Corporation (changed to Universal Finance Corporation) and of National Surety Co., dated April 3, 1928, and filed April 5, 1928	168, 523	889
D. 13	for Identification. Bond of Universal Finance Corporation with National Surety Company as surety; dated February 25, 1929; filed March 1, 1929	168	890
D. 14.	License under Chapter 49, Laws of 1914, for the year ending March 1, 1929; dated April 5, 1928—No. 554; issued to Public Service Finance Corporation and transferred to Universal Finance Corporation and address changed from 810 Broad Street to Broad and Market Streets, Newark, by endorsement dated July 2, 1928	169, 523	890

		Off'd	P't'd
D. 15.	Document entitled "Information, Rules & Regulations Relating to the Business of Making Small Loans," issued by the Department of Banking and Insurance of the State of New Jersey, dated August 31, 1922	169, 614	893
D. 16.	Document entitled "Information, Rules & Regulations Relating to the Business of Making Small Loans," issued by the Department of Banking and Insurance of the State of New Jersey, dated August 31, 1922, including additional rules issued December 26, 1928	170, 614	897
D. 17.	Additional rules and regulations relating to business of making small loans under Chapter 49, Laws of 1914, issued by the Bureau of Banking of the Department of Banking and Insurance of the State of New Jersey, dated December 26, 1928	170, 614	902
D. 18.	Paper entitled, "Universal Finance Corporation Marketable Securities. June 30, 1928"	222, 473	904
D. 19.	Certificate of Incorporation of Public Service Finance Corporation, dated March 23, 1928; and Certificate of Amendment changing name to Universal Finance Corporation and increasing capital stock, dated June 22, 1928	256	906
D. 20.	Agreement between Public Service Finance Corporation and Alexander G. Edwards for sale of certain preferred stock of Public Service Finance Corporation, dated March 28, 1928	300	916
D. 21.	Sample of certificate of preferred stock of Universal Finance Corporation. (Same as Exhibit D. 4)	316	918

	Off'd	P't'd
D. 22 for Identification. Letter "To Whom It May Concern" from New Jersey National Bank & Trust Co. of Newark, N. J., dated November 26, 1928	319	919
D. 23. Memorandum prepared by defendant Dewi T. Evans and identified by him and also by defendant Dale D. Hollenbaugh, as containing the figures which were presented to meeting of Board of Directors of Universal Finance Corporation held June 14, 1928	385	920
D. 24. Minutes of meeting of Board of Directors of Universal Finance Corporation of December 5, 1928	386	921
D. 25 for Identification. Photograph of Broad and Market Streets, identified by defendant Alexander G. Edwards	364	922
D. 26. Certificate of Incorporation of Financial Investment Corporation, dated June 8, 1928	422	923
D. 27. Subscription contract of Alexander Reid, dated November 20, 1928	457	932
D. 28. Subscription contract with Alexander Reid, dated December 11, 1928	459	933
D. 29. Lease from Market and Broad Realty Corporation to Public Service Finance Corporation, dated June 1, 1928, for third floor of building on southwest corner of Broad and Market Streets, Newark, for the term of 7 years and 11 months, commencing June 1, 1928	521	934
D. 30. Pamphlet entitled "Some Prominent Men on the Necessity for Industrial Banking (Popularly Termed the 'Small Loan Business')"	525	947
D. 31 for Identification. Balance sheet of Universal Finance Corporation as of March 30, 1929, with certificate of audit by Haskins & Sells	529	958

	Off'd	P't'd
Not marked. Files of the Court of Chancery in the case wherein Edward L. Katzenbach, Attorney-General, is complainant and Universal Finance Corporation and Financial Investment Corporation are defendants	286	960
Not marked. Files of the Court of Chancery in the case wherein Samuel Klein is complainant and Universal Finance Corporation is defendant	297	1033

Exhibit S. 1.

STATE'S EXHIBITS.

EXHIBIT S. 1.

Pamphlet or Prospectus from office of Universal Finance Corporation.

The Home
of a
Growing
New Jersey
Enterprise

Picture

Corner of Broad and Market Streets

At one of the busiest traffic centers in the United States are located the offices of UNIVERSAL FINANCE CORPORATION. In a recent two-hour count the pedestrian traffic was more than 25,000. And 85 out of every 100 are potential customers of Universal Finance Corporation.

Exhibit S. 1.

Why Industrial Banking Ranks High as a SAFE MONEY-MAKING INVESTMENT

Last year there were made in New York City alone—just one city and our largest—a total of 1,990,000 loans of $300.00 or less which amounted to the enormous sum of $341,000,000.00.

The bankers who are authority for these figures state that "Loans of this kind proved to be a sound form of financing". It is stated that losses of all kinds—including those of Industrial Banking Corporations, and all others, "amounted to less than 1%". This means that losses from Industrial Banking are so small that they need not be considered—for the major portion of this 1% loss was sustained by lenders other than Industrial Banking Institutions as conducted today. This gives you a picture of the enormity of the business—of its remarkable possibilities when the nation as a whole is considered. Because 85 people out of every 100 cannot be accommodated at a commercial bank on loans of $300.00 or less, Industrial Banking is becoming increasingly important as a factor of public service in the nation's credit accommodations.

How you live depends on YOU

What you do with your savings and surplus funds determines to a great extent how you will live and the advantages you will be able to provide for your family and yourself in the future.

Your Future

There is great responsibility in possession of money, even though the amount be small. Withdrawn from circulation, it is profitless. Wisely invested, it works for its owner and, what is ethically more important, it works for many others besides. Were money not available for lending purposes through financial houses or organizations, industries could not flourish. Economic prosperity depends on money that works and keeps on working. There is only one thing worse than lazy money—that is, money unwisely invested. The money owner who puts his capital in some enterprise that is unsound loses its service, and thus deprives others by restricting its profitable circulation.

Exhibit S. 1.

What your money owes to you
What you owe to it

You are entitled to more than a RENTAL RETURN on your money since it represents the fruits of your labors. Rental return is the equivalent of savings bank or bond interest. EARNING POWER is the return rightfully belonging to the owner of the money and which is increased by "rapid turnover" in the hands of skilled financiers.

You have a right to expect that money EARNING POWER will take care of you not only in your old age but now, too.

Give your money the same consideration that you would accord a faithful employee and it will return rich rewards. You would not ask a faithful employee to constantly risk his health in your employ—why risk your money by investing it where it may be lost to you, when there are so many safe investments that have a high return, such as bank stocks or loan stocks.

Officers of Universal Finance Corporation

President: D. D. Hollenbaugh.
Formerly Sales Manager, New York Office.
Proctor & Schwartz, Inc., Philadelphia.

Vice-President: Hon. Richard J. Fitzmaurice.
Commissioner Revenue and Finance, City of Orange, N. J.
Director, Trust Company of Orange, N. J.
Director, Federal Title & Mortgage Guarantee Co. of New Jersey.

Secretary and Treasurer: D. T. Evans.
D. T. Evans & Co., Investment Counsel, Trenton, N. J.

Officials of this Corporation are all men having an intimate knowledge of the investment and banking business. The administration of corporate affairs is therefore in the hands of competent executives—men who know what to do and how to proceed to make the corporation successful in filling the need which exists for the type of service the corporation is equipped to render.

Exhibit S. 1.

Universal Finance

Licensed by, and
Incorporated under the Laws of New Jersey.
Banking and Insurance of

Offering Unsold Balance

Par Value

6% Participating

(now paying 10%

A PARTICIPATING STOCK, preferred PARTICIPATES UP TO 50% OF preferred dividend requirements. Now required 6%, or a dividend of 10%

About the Corporation

UNIVERSAL FINANCE CORPORATION is an Industrial Banking Institution in active operation at Broad and Market Streets, Newark, N. J., whose business consists of loaning money in amounts of $300.00 or less to responsible, approved workers, these loans being repaid in weekly or monthly installments which include payment on principal plus legal interest. The security back of each loan is usually equal to double the amount loaned. It is, therefore, evident that the working capital used in this form of banking has great security and unlimited opportunities for high earnings because of frequent "turnover" or use. Money invested in the stocks of the UNIVERSAL FINANCE CORPORATION is always secured and is always at work earning a substantial profit. The Corporation, acting as your agent, secures FULL EARNING POWER of your money, which is many times its rental value.

THIS OFFERING OF UNIVERSAL FINANCE CORPORATION STOCK is therefore a very attractive investment and is made for the purpose of expanding operations through an increase of working capital (money to lend). Reliable authorities estimate the present actual requirements of this form of banking to be approximately $125,000,000 greater than the present capitalization.

Favorable opportunities for expansion in this field now exist which hold greater profit possibilities than almost any other form

Price $15.00

Subject to change

Financial Investment

Specialists in Industrial

605 Broad Street, Newark, N. J.

The information contained herein, while not guaranteed, has

Exhibit S. 1.

Corporation

Bonded to the State
Its business is supervised by the Department of
the State of New Jersey.

of $750,000.00

$10.00 Per Share

Preferred Stock

Annual Dividends)

as to dividends and assets, which
THE NET PROFITS after deduction of
paying an extra 4% in addition to the
annually. Dividends payable quarterly.

and its operation

of legitimate investment. This offering is, therefore, timely and presents a real opportunity for investors. Being a participating preferred stock, this offering possesses unusual earning power. *Previous offerings are now earning 10%* with every prospect of increasing as the Corporation's activities expand.

The 6% initial dividend requirement is a direct lien on all earnings and must be paid before any other dividends are declared, paid, or set aside for the Common Stock, the Preferred Stock dividends being cumulative from date of issue.

THE BY-LAWS make it imperative that any dividend declared on the Common Stock—out of surplus or net profits remaining after preferred dividends have been paid—shall be declared in equal amount on Preferred Stock also, thus dividing net profit equally between Preferred and Common Stock.

Money is not subject to the usual business hazards of embargoes, changes in style, obsolescence of plant, machinery, or other equipment. Its value is stable and always the same.

Furthermore, back of this Corporation's stock is the entire capital, surplus and current earnings, cash in office and banks, ownership of collateral loans, notes receivable, investment securities and other assets. The PREFERRED STOCK is a direct obligation against all the assets of the Corporation and has priority over the equity and interest of the Common Stock.

Per Share

without notice.

Corporation

Banking Issues

Telephone: Mulberry 1313-1314-1315-1316

been obtained from sources which we believe to be reliable.

Exhibit S. 1.

BANK STOCKS

VS.

INDUSTRIAL STOCKS

In an annual report by the United States Comptroller of the Currency, it was stated that the annual profit return on the capital stock of ALL National Banks in the United States amounts to 24% or more. In other words, for every $1000.00 invested in the capital stock of these banks, the annual profit return amounted to an average of more than $4.60 EVERY WEEK during the year. Banks and finance corporations make money regardless of general business conditions because people constantly need money to meet urgent obligations and the financial institutions loan this money to responsible borrowers. Finance corporations like the UNIVERSAL FINANCE CORPORATION are especially fortunate in this respect because State Legislation permits them to charge 3% per month on term loans of $300.00 or less. Through this State Legislation the fact is recognized that loans of this small sum justify a rate higher than the legal rate National and State Banks are permitted to charge.

It is evident therefore that money invested in finance corporation stock holds every prospect of permanently earning a higher rate of profit return than money otherwise invested.

Out of 700 Oil and Mining Companies..... 1 succeeds
Out of 100 Industrial Companies..... 5 succeed
Out of 100 Bond Issues .....97 succeed
Out of 100 Financial Institutions .....99 succeed

The average yearly return of all successful

Oil and Mining Companies is..... 9%
Industrial Companies 8%
Bond Issues 5%
Financial Institutions 25%

In the United States

112 Leading Trust Companies
average .....16% yearly Dividends
PLUS an average surplus of $425.00 per share

112 Leading Industrial Stocks
average..... 6% yearly Dividends

112 Leading Railroad Stocks
average..... 5% yearly Dividends

112 Leading Bond Issues average..... 5% yearly Return

Exhibit S. 1.

WE RECOMMEND THESE SHARES AS AN ATTRACTIVE INVESTMENT

In this stock discriminating investors have the opportunity to acquire a sound investment in a proven field. The present offer is especially attractive because the business is not only established and demonstrating its earning prospects, but the issue combines in an unusual way the security of principal and interest of Preferred Stock and FULL PARTICIPATING RIGHTS of the Common Stock in the profits of the Corporation.

Registrar and Transfer Agents:

Broad & Market National Bank & Trust Co., Newark, N. J.

Auditors:

Haskins & Sells, Certified Public Accountants.

Depository:

Broad & Market National Bank & Trust Co., Newark, N. J.

Installment selling has given impetus to this form of credit extension because Industrial Banking, in its final analysis, is installment buying in its most highly developed form. It enables that great body of American Citizenry—the middle class—to purchase and provide necessities that make for greater happiness and efficiency of each individual and of the group as a whole—and pay for them in convenient installments.

In other words, money is advanced to approved individuals of unquestioned earning power—this money being used to purchase the services of doctor, dentist, etc., to buy clothing, furniture, and for other requirements approved by the lender—each borrower paying back both principal and legal interest of the loan in installments based on the person's earning power. Meanwhile the security for the loan is many times its initial face value, so that loss from non-payment rarely occurs. Industrial Banking Institutions do not compete with the established commercial banks, but rather supplement and complete the work initiated and carried on by these commercial banks. Each performs a necessary service to the communities in which they are established, their earnings depending upon the extent of their operations—the more money loaned the greater are the net earnings of the corporation.

Exhibit S. 1.

We Broadcast

W A B C

Designating the period of broadcasting as "The Musical Portfolio", Financial Investment Corporation provides a half hour of enjoyable entertainment every

Monday—Wednesday—and Friday
Evening from W A B C

On Tuesday, Thursday and Saturday we broadcast from this station weather reports for the convenience of the public. Watch your local newspapers for announcement of time.

"The Musical Portfolio" naturally suggests a collection of INTERESTING musical numbers, both vocal and instrumental, and that is what we aim to make this period—interesting as well as entertaining.

In connection with "The Musical Portfolio", we introduce "The Financial Portfolio" and we predict that you will find this part of our feature period more interesting, if not more entertaining, than "The Musical Portfolio". Tune in and let us know how you like our efforts in your behalf.

W A A T

In our broadcast from this station, we provide a very brief talk on INVESTMENTS, giving some interesting facts that everyone should know.

FACTS ABOUT BANKING

Establishment of a bank in the United States was first discussed in the colony of Massachusetts Bay in 1652, but the first bank was not organized until the year 1712. This was known as the Land Bank.

In 1790 there were only three state banks in existence, but no national banks such as we have today.

In this same year, ten of the thirteen original states had no banks at all. The three banks then in existence were the Bank of North America, founded 1781 in Philadelphia, the Bank of New York founded in 1784, and the Massachusetts bank.

Today there are about 8,000 National Banks in the United States with resources of more than 22 billions of dollars; there are more than 22,000 State Banks with resources above 30 billions; there are more than 1,000 Private Banks with resources exceeding 200 millions.

The National Banks of the United States have an ANNUAL PROFIT RETURN on their capital stock of more than 24%.

Exhibit S. 2.

EXHIBIT S. 2.

Advance proof of pamphlet or prospectus from office of Universal Finance Corporation.

Your Future

There is a great responsibility connected with the possession of money, even a small amount of money. If it is withdrawn from circulation, it does its owner no good. If it is wisely invested, it works for its owner and, what is ethically more important, it works for many others besides. Were money not available for lending, industries could not flourish. Economic prosperity depends on money that works and keeps on working.

There is only one thing worse than lazy money—that is money unwisely invested. The money owner who puts his capital in some enterprise or investment that is unsound loses it and deprives others.

What Your Money Owes To You—What You Owe To It

You are entitled to more than a rental return on your money since it represents the fruits of your labor. You have a right to expect that it will take care of you not only in your old age, but also now.

But you owe your money consideration—the same consideration that you would show a faithful employee. You would not ask a man who works for you to risk his health in your employ. In the same way you should not risk your money by investing it where you even suspect that it might be lost.

Advance Proof

$750,000.00

UNIVERSAL FINANCE CORPORATION

Incorporated under the Laws of New Jersey

Engaged in

INDUSTRIAL BANKING
BONDED TO THE STATE

Business under the supervision of the Department of

BANKING and INSURANCE
of New Jersey

6%

PREFERRED STOCK PARTICIPATING TO 50% OF THE NET PROFITS

INTEREST PAYABLE QUARTERLY

FINANCIAL INVESTMENT CORPORATION
Fiscal Agents
810 Broad St. Newark, N. J.

Phone:
Mulberry 1313-1314

Exhibit S. 2.

The Nation's Most Profitable Business

UNDER GOVERNMENT SUPERVISION

ALL financial institutions to which life is granted by the State are created to perform a specialized work in the interest of society. Accordingly, we have the Federal Reserve Bank, Federal Land Bank, National Banks, State Land Banks, State Banks of Discount, Trust Companies, Savings Banks, Building and Loan Associations, and Industrial Banking Corporations such as UNIVERSAL FINANCE CORPORATION.

TO outline the powers and duties of the various classes of financial institutions would require more space than is available in this leaflet. It is enough to say that each is unique in its field and is indispensable in the economic machinery of society which gives it life by charter. Each institution is operated under special legislation of the Federal or State Government that has chartered it, and special departments of government are provided to supervise it and to enforce the law.

INDUSTRIAL BANKING

UNIVERSAL FINANCE CORPORATION is authorized to do business under the "Egan" or "Small Loan Act," passed by the New Jersey State Legislature in 1914. The Company is bonded to the State. The business is under the supervision of the Department of Banking and Insurance of the State of New Jersey. It is therefore apparent that the State recognizes that a real need exists for financial institutions of this character—namely, to make individual loans not exceeding Three Hundred Dollars ($300.00). These loans are secured by promissory notes given by the borrower and endorsed by property owners or secured by chattel mortgages, or both. The loans are repaid by monthly installments with interest; thus the margin of security is ample at all times and the element of risk reduced to a minimum.

SPECIFIC OPERATION

UNIVERSAL FINANCE CORPORATION provides financial assistance to individuals who have no bank affiliations and who need temporary financial aid. The loans are made only to individuals who can show ample security, and who, upon investigation, are shown to be good moral risks.

APPROXIMATELY 85 out of every 100 persons carry no substantial balance in checking accounts. Hence, when in need of financial assistance, they cannot be served by the average commercial bank. This leaves millions of people who cannot be taken care of by the banks, and whose credit needs exceed $200,000,000.00. An enormous gap in the country's banking structure is thus created,—a gap which existing industrial banking institutions are unable to bridge with their present facilities. Hence, the development and unlimited future of UNIVERSAL FINANCE CORPORATION.

INDIVIDUAL financing is to the individual, what commercial banking is to the retail store, or mortgage loans are to the home builder.

THE Department of Banking and Insurance of the State of New Jersey makes a periodical examination into the affairs of this corporation.

OUR corporation is operated under License 554, Chapter 49, Laws of 1914, State of New Jersey.

Exhibit S. 2.

We Broadcast Official Weather Reports NIGHTLY from STATION WABC New York *at the following hours*:

Monday 7 and 10 Tuesday 7 and 10 Wednesday 7 and 10
Thursday 7 and 10:30 Friday 7 and 10
Saturday 7 and 10:30

Each report is supplemented by a brief informative talk.

FACTS ABOUT BANKING PAST AND PRESENT

The first bank is said to have been established by the Lombardy Jews in Italy as early as 808, more than eleven hundred years ago.

The Bank of England was established in 1694 with a capital of $6,000,000 and the returns permitted were fixed at 8%.

The establishment of a bank in the United States was first discussed in the Colony of Massachusetts Bay in 1652, but the first bank was not organized until the year 1712. This was known as the Land Bank.

In 1791 Alexander Hamilton induced Congress to establish the first Bank of the United States with a capital of $10,000,000. Thomas Jefferson opposed the establishment of this bank and Congress refused to renew its charter at the end of twenty years.

The United States National Banking System arose as a part of the Government's endeavors during the Civil War to finance the struggle.

The National Banks of the United States return annual profits on their capital stock of more than 24%.

There are about 8,000 National Banks in the United States with resources of more than 22 billions; there are more than 22,000 State Banks in the United States with resources above 30 billions; there are more than 1,000 Private Banks in the United States with resources exceeding 200 millions.

The combined resources of all the banks in the United States are in excess of $52,000,000,000. Bank clearings in the United States aggregate more than $500,000,000,000 a year, or an amount equal to the combined wealth of England, France, Italy, Japan and the United States.

COMPARISONS THAT WILL OPEN YOUR EYES

EVERYONE knows that financial institutions make money and that their earnings are very large indeed, but only now and then do you have a chance to see the actual figures. Here are some facts and figures taken from Poor's Manual and other reliable sources that prove conclusively the safety and profit making possibilities of investments in such enterprises, in comparison with other lines of business:

Out of 700 Oil and Mining Companies.....	1 succeeds
Out of 100 Industrial Companies	5 succeed
Out of 100 Bond Issues	97 succeed
Out of 100 Financial Institutions.....	99 succeed

The average yearly return of all successful

Oil and Mining Companies is.....	9%
Industrial Companies	8%
Bond Issues	5%
Financial Institutions	25%

Exhibit S. 2.

In the United States
112 Leading Trust Companies average 16% *yearly dividends* and show an average surplus of $425 *a share*
112 Leading Industrial Stocks average.....6% yearly dividends
112 Leading Railroad Stocks average.....5% yearly dividends
112 Leading Bond Issues average.....5% yearly returns

(*The above statements, while not guaranteed, are based on sources which we believe to be reliable.*)

PARTICIPATION

The participation in the profits of the business that has been provided for in this issue of Preferred Stock is an unusually attractive feature and one that will appeal to all classes of investors.

The stock we are selling is a 6 per cent. cumulative Preferred Stock and dividends are payable quarterly. This 6 per cent. dividend shall be paid before any dividend shall be declared, paid, or set aside for the Common Stock, and such Preferred dividends shall be cumulative from the date of issue.

Out of any surplus or net profits of this Corporation remaining, after full cumulative dividends as aforesaid upon Preferred Stock, then outstanding, shall have been paid for all past dividend periods, and after full dividends on the Preferred Stock for the current dividend period shall have been declared or set aside for payment; then the Board of Directors may declare and pay dividends upon both the Preferred and the Common Stock; SUCH DIVIDENDS, HOWEVER, TO BE PAYABLE IN EQUAL AMOUNTS IN RESPECT OF EACH AND EVERY SHARE OF BOTH SUCH CLASSES OF STOCK.

In other words, before any dividends can be paid on the Common Stock, 6 per cent. cumulative interest must be paid on the Preferred Stock. Out of any dividend declared outside of the said 6 per cent. dividend, such extra dividend must be divided equally between the Preferred and the Common stockholders; in other words the Preferred Stock participates up to 50 per cent.

OFFICERS

President: D. D. Hollenbaugh
Formerly Sales Manager, New York Office, Proctor & Schwartz, Inc., Philadelphia.

Vice-President: Hon. Richard J. Fitzmaurice
Commissioner Revenue & Finance, City of Orange, N. J.
Director, Trust Company of Orange, N. J.
Director, Federal Title & Mortgage Guaranty Co. of New Jersey.

Secretary: Frank R. Tappan
President, Realty Investment Co., Newark, N J.
Director, Newark Credit Men's Association.

Treasurer: D. T. Evans
D. T. Evans & Co., Investment Counsel, Trenton, N. J.

Registrar and Transfer Agents: Broad & Market National Bank, Newark, N. J.

Certified Public Accountants: Haskins & Sells

Depository: Broad & Market National Bank, Newark, N. J.

Exhibit S. 3.

EXHIBIT S. 3.

Pamphlet or Prospectus from office of Financial Investment Corporation.

We Offer-
Unsold balance of

$750,000.00

Universal Finance Corporation

Incorporated under the Laws of New Jersey
Engaged in

INDUSTRIAL BANKING
BONDED TO THE STATE

Business under the supervision of the Department of

BANKING AND INSURANCE

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Fiscal Agents

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Licensed by, and
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Banking and Insurance of

Offering Unsold Balance

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6% Participating

(now paying 10%

A PARTICIPATING STOCK, preferred PARTICIPATES UP TO 50% OF preferred dividend requirements. Now required 6%, or a dividend of 10%

This to be increased to 12% starting

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Price $16.00

Subject to change

Financial Investment

Specialists in Industrial

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Exhibit S. 3.

Corporation

Bonded to the State

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of $750,000.00

$10.00 Per Share

Preferred Stock

Annual Dividends)

as to dividends and assets, which

THE NET PROFITS after deduction of

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January, 1929, and payable monthly

and its operation

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THE BY-LAWS make it imperative that any dividend declared on the Common Stock—out of surplus or net profits remaining after preferred dividends have been paid—shall be declared in equal amount on Preferred Stock also, thus dividing net profit equally between Preferred and Common Stock.

Money is not subject to the usual business hazards of embargoes, changes in style, obsolescence of plant, machinery, or other equipment. Its value is stable and always the same.

Furthermore, back of this Corporation's stock is the entire capital, surplus and current earnings, cash in office and banks, ownership of collateral loans, notes receivable, investment securities and other assets. The PREFERRED STOCK is a direct obligation against all the assets of the Corporation and has priority over the equity and interest of the Common Stock.

Per Share

without notice.

Corporation

Banking Issues

Telephone: Mulberry 1313-1314-1315-1316

been obtained from sources which we believe to be reliable.

Exhibit S. 3.

BANK STOCKS
VS.
INDUSTRIAL STOCKS

In an annual report by the United States Comptroller of the Currency, it was stated that the annual profit return on the capital stock of ALL National Banks in the United States amounts to 24% or more. In other words, for every $1000.00 invested in the capital stock of these banks, the annual profit return amounted to an average of more than $4.60 EVERY WEEK during the year. Banks and finance corporations make money regardless of general business conditions because people constantly need money to meet urgent obligations and the financial institutions loan this money to responsible borrowers. Finance corporations like the UNIVERSAL FINANCE CORPORATION are especially fortunate in this respect because State Legislation permits them to charge 3% per month on term loans of $300.00 or less. Through this State Legislation the fact is recognized that loans of this small sum justify a rate higher than the legal rate National and State Banks are permitted to charge.

It is evident therefore that money invested in finance corporation stock holds every prospect of permanently earning a higher rate of profit return than money otherwise invested.

Out of 700 Oil and Mining Companies..... 1 succeeds
Out of 100 Industrial Companies..... 5 succeed
Out of 100 Bond Issues .....97 succeed
Out of 100 Financial Institutions .....99 succeed

The average yearly return of all successful

Oil and Mining Companies is..... 9%
Industrial Companies 8%
Bond Issues 5%
Financial Institutions 25%

In the United States

112 Leading Trust Companies average .....16% yearly Dividends PLUS an average surplus of $425.00 per share

112 Leading Industrial Stocks average..... 6% yearly Dividends

112 Leading Railroad Stocks average..... 5% yearly Dividends

112 Leading Bond Issues average..... 5% yearly Return

Exhibit S. 3.

WE RECOMMEND THESE SHARES AS AN ATTRACTIVE INVESTMENT

In this stock discriminating investors have the opportunity to acquire a sound investment in a proven field. The present offer is especially attractive because the business is not only established and demonstrating its earning prospects, but the issue combines in an unusual way the security of principal and interest of Preferred Stock and FULL PARTICIPATING RIGHTS of the Common Stock in the profits of the Corporation.

Registrar and Transfer Agents:

Broad & Market National Bank & Trust Co., Newark, N. J.

Auditors:

Haskins & Sells, Certified Public Accountants.

Depository:

Broad & Market National Bank & Trust Co., Newark, N. J.

Installment selling has given impetus to this form of credit extension because Industrial Banking, in its final analysis, is installment buying in its most highly developed form. It enables that great body of American Citizenry—the middle class—to purchase and provide necessities that make for greater happiness and efficiency of each individual and of the group as a whole—and pay for them in convenient installments.

In other words, money is advanced to approved individuals of unquestioned earning power—this money being used to purchase the services of doctor, dentist, etc., to buy clothing, furniture, and for other requirements approved by the lender—each borrower paying back both principal and legal interest of the loan in installments based on the person's earning power. Meanwhile the security for the loan is many times its initial face value, so that loss from non-payment rarely occurs. Industrial Banking Institutions do not compete with the established commercial banks, but rather supplement and complete the work initiated and carried on by these commercial banks. Each performs a necessary service to the communities in which they are established, their earnings depending upon the extent of their operations—the more money loaned the greater are the net earnings of the corporation.

Exhibit S. 3.

We Broadcast

W A B C

Designating the period of broadcasting as "The Musical Portfolio", Financial Investment Corporation provides a half hour of enjoyable entertainment every

Monday—Wednesday—and Friday
Evening from W A B C

On Tuesday, Thursday and Saturday we broadcast from this station weather reports for the convenience of the public. Watch your local newspapers for announcement of time.

"The Musical Portfolio" naturally suggests a collection of INTERESTING musical numbers, both vocal and instrumental, and that is what we aim to make this period—interesting as well as entertaining.

In connection with "The Musical Portfolio", we introduce "The Financial Portfolio" and we predict that you will find this part of our feature period more interesting, if not more entertaining, than "The Musical Portfolio". Tune in and let us know how you like our efforts in your behalf.

W A A T

In our broadcast from this station, we provide a very brief talk on INVESTMENTS, giving some interesting facts that everyone should know.

FACTS ABOUT BANKING

Establishment of a bank in the United States was first discussed in the colony of Massachusetts Bay in 1652, but the first bank was not organized until the year 1712. This was known as the Land Bank.

In 1790 there were only three state banks in existence, but no national banks such as we have today.

In this same year, ten of the thirteen original states had no banks at all. The three banks then in existence were the Bank of North America, founded 1781 in Philadelphia, the Bank of New York founded in 1784, and the Massachusetts bank.

Today there are about 8,000 National Banks in the United States with resources of more than 22 billions of dollars; there are more than 22,000 State Banks with resources above 30 billions; there are more than 1,000 Private Banks with resources exceeding 200 millions.

The National Banks of the United States have an ANNUAL PROFIT RETURN on their capital stock of more than 24%.

Exhibit S. 3.

Why Industrial Banking Ranks High as a SAFE MONEY-MAKING INVESTMENT

Last year there were made in New York City alone—just one city and our largest—a total of 1,990,000 loans of $300.00 or less which amounted to the enormous sum of $341,000,000.00.

The bankers who are authority for these figures state that "Loans of this kind proved to be a sound form of financing". It is stated that losses of all kinds—including those of Industrial Banking Corporations, and all others, "amounted to less than 1%". This means that losses from Industrial Banking are so small that they need not be considered—for the major portion of this 1% loss was sustained by lenders other than Industrial Banking Institutions as conducted today. This gives you a picture of the enormity of the business—of its remarkable possibilities when the nation as a whole is considered. Because 85 people out of every 100 cannot be accommodated at a commercial bank on loans of $300.00 or less, Industrial Banking is becoming increasingly important as a factor of public service in the nation's credit accommodations.

Exhibit S. 4.

EXHIBIT S. 4.

Form letter without date on letterhead of Financial Investment Corporation, signed by W. F. Cawthorne, Treasurer.

Phone Mulberry
1313-1314

Specialists in Industrial
Banking Stocks

FINANCIAL INVESTMENT CORPORATION
GRIFFITH BUILDING
605 BROAD STREET
NEWARK, N. J.

Dear Sir:

I asked our Mr. Perry this morning, if he had received a subscription from you and he tells me he has not. WHAT HAS HAPPENED? Surely your inquiry was prompted by a desire to invest.

Do you realize the possibilities of UNIVERSAL FINANCE CORPORATION Participating Preferred Stock, at this time? As you no doubt know, fortunes are made by investing in the securities of financial institutions on a basis where you participate in the net earnings, and where you get in on the so-called "ground floor," enjoying a natural appreciation in the value of your investment *in addition to handsome dividends you receive.*

Here are the major facts concerning this corporation:

This is a 6% Participating Preferred Stock, which means, after the 6% is set aside for dividends, one half of the remaining net profits are distributed to holders of this stock.

Broadcasting security offerings over the radio is permitted only after a very thorough investigation.

The business is under the supervision of the Department of Banking and Insurance of the State of New Jersey.

Now paying dividends of 10% per annum; this is to be increased to 12% on January 1st, 1929; all out of earnings, and still adding to surplus account.

The Treasurer of the Corporation, Mr. Dewi T. Evans, State Examiner, Division of Securities, Attorney General's Office, of the State of New Jersey.

All detail work is in the hands of Haskins and Sells, one of the leading firms of certified public accountants of the United States.

Finally, the increase in dividend rate will naturally cause a sharp increase in the price of these shares.

Exhibit S. 4.

The above facts are causing conservative investors to BUY NOW.

We want to protect you at the $15.00 price and have made a temporary reservation for you. Wire at once the number of shares you desire and mail check.

Later I will look for a letter from you, thanking me for giving you this opportunity.

Yours very truly,

FINANCIAL INVESTMENT CORPORATION.

W. F. CAWTHORNE
Treasurer

Exhibit S. 5.

EXHIBIT S. 5.

Pamphlet entitled "The Treasure Chest of Modern Finance", (issue of Dec. 1928).

Treasure chests of fiction
that "dot the barren main",
A hunt for them is really,
a waste of time and brain.
But there IS a treasure chest,
that holds within its frame
A fortune, tho it doesn't bulge
with gems like those of fame.
This great old chest is open,
for all who wish to view
Its treasure, and it's welcomed
by good people such as you.
Four times a year a portion
of its contents, just and due,
Is dispensed to those who own it,
who are people just like you.

The Treasure Chest of Modern Finance

Copyrighted 1928 F. I. C.

Tune in on
W M A K
Buffalo
W A B C
New York
W A A T
Jersey City
W G C P
Newark
Watch your
local papers
for
announcement
of time.

PUBLISHED MONTHLY DECEMBER 1928

SEASON'S GREETINGS

May all the holiday joys come to you and yours . . . . . .

Whether or not your're one of "our official family", we extend a cordial invitation to you and all our friends to form a closer association with this organization. And it is because we consider you our friend that we tender our best wishes for

A MERRY CHRISTMAS AND A PROFITABLE ONE

Whenever I hear some sophisticated, knee-breeched lads brazenly assert that "there ain't no Santa Claus", I know that when they reach our age they'll have a truer knowledge. The older we become, you and I, the surer do we believe there is a Santa Claus. To bring this statement home to you, we are pleased to offer, on behalf of Universal Finance Corporation, a Christmas gift we know you'll appreciate. You will find the good news on another page.

There is a Santa Claus. He may not wear furs or whiskers, may not drive reindeers, nor drop down chimneys, but we know he lives in our lives. He is the SPIRIT of the greatest day in the old pagan and new Christian world—he is the embodiment of love and good cheer, and good will towards friends.

Business needs friendships as a cook needs salt. The business has failed that is built only on $$$ and ¢¢¢. Life itself is only worth while in proportion to the friendships that exist in busi-

Exhibit S. 5.

ness. We endeavor to serve our clients as friends—and we regard you as one of our friends whether or not you place your funds for investment with us. Therefore . . . . . .

On behalf of this Company and myself, the most sincere wish I can pen is that you may have many more years to live to spread the spirit of Santa Claus to others, giving them more than material presents, the best and finest of yourself.

Sincerely,

W. F. CAWTHORNE,
Treasurer, Financial Investment Corporation.

A tree full of Christmas wishes which springs from a solid foundation

DIVIDENDS

See page three for an important announcement concerning dividends

THE
TREASURE CHEST
of
MODERN FINANCE

Exponent of Safety in Profitable Investments

Devoted to the Financial Interests of
Holders of Securities offered by

FINANCIAL INVESTMENT
CORPORATION
605 Broad Street
Newark, N. J.

Published Monthly by
Specialists in
INDUSTRIAL BANKING ISSUES

L. W. VAN DENBURGH
Editor

Exhibit S. 5.

Give a Thought to This

The candle at the left has just been lighted. It represents a new day. An important thought to remember is that it represents a new opportunity to do the things that have been put off from time to time.

It is a symbol of good cheer—of the best yet to be. It also holds something of the mysterious to the youngsters who are looking for Santa.

But to we older ones, you and I, this burning candle has another and deeper significance. IT SUGGESTS THE SLOW BUT SURE PASSAGE OF TIME. Every hour it continues to burn it melts a little, leaving just that much less of opportunity to cast its cheerful light upon its environments. Time is the only CAPITAL that comes to us unsolicited, to do with as we, in our wisdom, consider best. Invested in the proper manner, its dividends and rewards are highly satisfactory.

It is therefore a very good idea at this time of the year to consider the deeds left undone—duties that, when done, will carry the Christmas spirit forward into the years to come.

And one of our most important duties is to invest our other capital—MONEY—in a way that will also bring to us a highly satisfactory return. The one purpose of this, your publication, is to point out the right way—the safe way, if you please—to invest your money capital. Its aim is to pass on to you helpful information that will aid you in building an income—an income that will endure through the years.

Investors' Protective Column

This column is reserved for information which will help you in first, avoiding unsafe channels of stock investment and, secondly, make better use of those which are safe and legitimate.

Exhibit S. 5.

AN ANSWER TO A QUESTION ASKED MANY TIMES

By D. T. Evans,
D. T. Evans & Co., Investment Counsel.

It is a well-known fact that shrewd business men do not invest any great proportion of their money in stocks of a highly speculative character—why then should the average person, who can ill afford to lose what little he or she may have, consider for even a moment doing that which seasoned business men frown upon? It is one of the enigmas of human nature that some people will insist upon doing that which the experienced person has found to be foolhardy and reckless. It should be the desire of every sincere investor to follow the advice of those who are experienced in the ways of modern finance and seek to avoid the pitfalls which ensnare the unwary.

Shrewd investors are more and more giving greater consideration to the shares of banking institutions and to the shares of those companies engaged in allied lines of business. It is to such as these that the stocks of personal financing or industrial loan companies have an especial appeal. But there are questions connected with such an investment that many have as yet unexpressed but which have been voiced in one way or another by the hordes of investors storming the doors of brokers.

Some may ask "Is it not a fact that individuals in varying circumstances require investments special to themselves?"

The question is natural, for it would appear impossible by means of one type of investment to supply the needs of people as differently situated as a retired business man, a mechanic, a laborer, a school teacher, and a minor.

But if these people were all suffering from the same kind of ailment, they would usually get the same or similar medicine simply because all human bodies function in very much the same way.

There is an analogy in the world of modern finance. The subject of investment to fit the needs of these people calls for consideration along identical lines, because each would demand the same or very similar qualities in the investment in which they place their money.

The fact that a retired business man demands safety as a prime requisite in his investments does not affect the question—or that a mechanic demands high return—a minor, appreciation in value

Exhibit S. 5.

—a laborer, security for emergency loans—a school teacher, safety of principal plus high yield—these requirements, taken individually or collectively, do not affect the question.

In each case, the desires of the individual are based on certain fundamental requirements that every intelligent investor looks for in his or her investments. These fundamentals are safety of principal and as high a yield as the money invested will earn. No one, however reckless, actually wants to lose money in investments—nor does any one want to invest in low dividend securities when safe high yield securities are available.

There is one type of investment that fulfills the requirements of a larger body of investors than any other—and that is an investment in personal financing or industrial loan institutions.

It is an investment that the person in moderate circumstances can well afford as the shares sell at a figure which permits outright purchase of a small number of shares or the purchase of a larger number of shares on the partial payment plan.

It is an investment which possessses safety of principal, because the principal is always secured by sufficient collateral to insure its repayment by borrowing customers of the loan company in whose shares an investment is made.

It is an investment providing high yield from earnings, whose dividends compare favorably with those of banking institutions of unquestioned integrity and stability of many years standing.

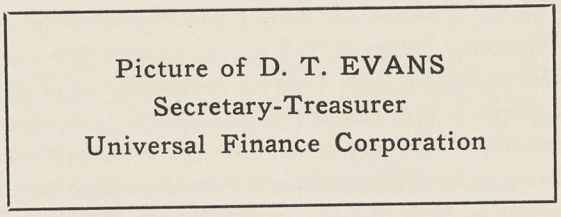
It is an investment for the average individual and can be recommended for consideration—but, be sure the company whose shares you buy is a licensed, bonded, reputable company whose business is under the supervision of the State Department of Banking in the State in which it is organized and carrying on its business.

Special Notice

It is with a great deal of pleasure that we announce the association with us of M. B. Shepard Company, Investment Bankers, in the sale of Universal Finance Corporation Preferred Stock.

M. B. Shepard Company will serve those of our friends located in or near Buffalo. Their address is 448-450 Ellicott Square, where they will be glad to greet those who live in this part of New York State.

Exhibit S. 5.



A Personal Message from Mr. D. T. Evans

It is with sincere gratification that this opportunity is accepted to sketch briefly the excellent growth and progress of the Industrial Loan Business, the business of the Universal Finance Corporation.

The business of the corporation—industrial loans—is fast being recognized by the leading banking institutions of the country and many of the leading financiers believe it will have a far-reaching effect on the economic life of the country.

In the short space of a few months the corporation has far outdistanced the fondest expectations and hopes of the officers of the corporation and the future favorable progress of the corporation is unquestionable.

The first branch office of the corporation was opened during the month of November and probable locations for additional branch offices are now being considered by your Board of Directors throughout the State of New Jersey and other states.

The demands for loans during recent weeks have been so great that the clerical force of the corporation has been increased and from present indications will be again enlarged to handle the large amount of business during the month of December and the holiday season.

The growth of the business of the Universal Finance Corporation is best evidenced by the increase in the dividend rate from 10% to 12%. This is in line with the policy of your Directors, who feel that the stockholders of the corporation are justly entitled to the fullest benefit from the participating feature of our Preferred Stock.

The proven safety and profitability of the industrial loan business are attracting capital to the business in the same way that it finds its way into other recognized industries.

Exhibit S. 5.

Because of the favorable earning power of money engaged in the industrial loan business, the necessity and the enormous demands of the business, high type of management of the corporation and the high standards of ethics employed, together with the favorable record of the corporation, I feel assured that the stockholders may confidently look forward to continued and increasing returns from their investments in the shares of the Universal Finance Corporation.

Allow me to take this opportunity to extend best wishes for a Happy Christmas and a Prosperous New Year to all of our shareholders and friends.

DEWI T. EVANS,
Secretary-Treasurer
Universal Finance Corporation.

Latest News

Just as we are going to press with this issue of your "Treasure Chest", there comes the welcome news of INCREASED DIVIDENDS.

The ardent support given its business by the borrowing public has enabled the Directors of Universal Finance Corporation to declare an increase in the Participating Dividend of the Preferred Stock. As you all know, this security pays a 6% guaranteed annual dividend, with a participation up to 50% in the net profits of the company.

Until January first, the Participating Dividend will continue at 4%, as now, or a total dividend rate until that time of 10% per annum. After January first, the Participating Dividend rate will be increased to 6%, or a total dividend of 12%.

Here is some more good news. Instead of paying dividends quarterly as at present, dividends will be paid monthly after January first.

Greater Dividends always mean a RAISE IN PRICE OF STOCK. So MAKE YOUR RESERVATIONS NOW for additional shares.

Exhibit S. 5.

For Re-Investment of January Dividends

Preferred Stock of Universal Finance Corporation—Participating in the Profits of the Corporation Equally with the Common Stock.

If you act promptly you may become a part owner in the rapidly growing business of Universal Finance Corporation. An investment in the preferred shares of this organization differs somewhat from the ordinary investment in Preferred Stock. In this company, the present issue of Preferred Stock is a PARTICIPATING STOCK. It carries a guaranteed annual dividend rate of 6% PLUS a participation up to 50% in the net profits of the company.

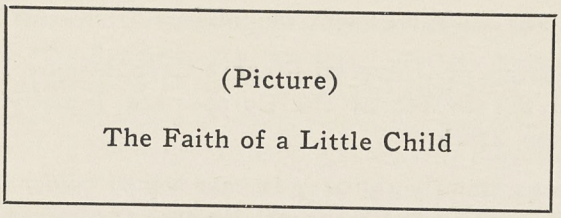
In other words, it combines the safety of a stock guaranteed as to dividends and assets and the high earning power of a common stock. Right now it is on a 10% Annual Dividend Basis, this to be increased as noted elsewhere in this publication.

The business of Universal Finance Corporation is stable; it supplies a necessary public service, the demand for which is constantly increasing; its management is conducted by the highest type of executives; its growth has been steady and consistent; its resources are secured against loss by the nature of the business. These conditions contribute to the safety, high yield, and profitable expansion of the business with a consequent security to stockholders and an appreciation in the value of their holdings.

Stock is now offered at $15.00 per share, subject to change without notice. Its par value is $10.00 per share. Its annual dividend rate is high now, but the nature of the business—personal financing—holds promise of an increase as the company expands its operations.

Financial Investment Corporation gladly recommends this stock to you because of its safety and better than average yield, together with the favorable probability of an enhancement in value. Promptness should be observed if you wish to secure part of this issue of stock at the low price of $15.00 per share. Stock is being rapidly subscribed and an increase in price has been decided upon. More complete information will be gladly given at your request.

Exhibit S. 5.



What more inspiring sight is there than the unalloyed faith of a little child in the great goodness of dear old Santa!

Patiently waiting for the gifts that she is so sure will be there to greet her eyes at the dawn of the morning!

Do not disillusion this faith of the children, but act now to make this faith one that shall continue into the years.

Parents have no greater blessing than the continued confidence of their children—year after year—in the wisdom and goodness of "daddy" and "muvver."

What of the future?

Are you doing everything a parent should do to make their lives happy and complete in the years to come?

Here is a suggestion for this Christmas season—a suggestion which, if followed, will provide a real help for your little ones when they grow to high school and college age or older.

It has been shown, time after time, that the one safe way to accumulate a competency is to buy bank stocks or similar securities that yield more than the pitifully small return on savings accounts.

Purchase such stocks out of income just the way you would buy a radio or other article of furniture for your home. There is a way to do this and the officers of the organization which is sponsoring this publication are committed to a policy of honest advice on the question of accomplishing this much desired result in a way that will accommodate itself to your own circumstances.

Create a fund through the purchase of worthwhile stocks that will not only *appreciate in value* but will pay a substantial dividend as well. Leading bank stocks are usually closely held and can be obtained only on the payment of many times their par value. And they are usually worth all they cost because of the high rate of dividends that they pay.

Exhibit S. 5.

For those in moderate circumstances there is a way to get high yield securities at a reasonable figure. These securities are issued by what is popularly known as "Industrial Loan Institutions"—organizations which extend to the honest, worthy people in each community in which they do business the same privileges that the large bank extends to depositors who are also borrowers. The profits of these "Industrial Loan Institutions" oftentimes justify a dividend rate as high as 30% per annum.

It has been stated on very good authority that the industrial loan business is in its infancy. The future of this branch of banking can well be imagined when it is known that there are more than 30,000 banks of all kinds that extend borrowing privileges to but FIFTEEN PER CENT of those who wish to borrow. CONSIDER! There are 85% of the people who wish to borrow through some banking institution but who cannot be accommodated at the commercial banks and trust companies for the very good reason that the needs of this large percentage is for loans of less than $300.00, and these banks and trust companies are not so organized that they can handle a loan of this small amount. PROFITABLY. THAT IS WHY the industrial loan business has such a bright future. And that is why stocks purchased from FINANCIAL INVESTMENT CORPORATION, who are specialists in industrial loan securities, offer such an excellent opportunity to obtain high yield with safety.

In another column of this publication there is offered at this time the securities of an industrial institution which has shown remarkable progress because of the ability and foresight of the men responsible for its success. Read about it and follow our suggestion for this Christmas season—to create a fund through the purchase of safe high yield securities that will provide an income for your little ones now and will continue to help defray expenses through high school and college—a Christmas gift that will GROW in value as the years pass.

Exhibit S. 5.

Tune In On WABC

Designating the period of broadcasting as "The Musical Portfolio", Financial Investment Corporation provides a half hour of enjoyable entertainment every

Monday—Wednesday—and Friday
Evening from WABC

On Tuesday, Thursday and Saturday we broadcast from this station weather reports for the convenience of the public. Watch your local newspapers for announcement of time.

A recent issue of *The Financial World* contained the following observation concerning the Industrial Loan Business:

Modern loan methods have expanded so rapidly in recent years that the small borrower is becoming a factor of utmost importance in this development. That fact is substantially attested to by the entrance of some of the most conservative investment houses into this field of operation and also by the efforts made by one of our leading commercial banks to capture a large part of this business. The reason for this evolution is pointed out by bankers who are authorities on loan companies catering to small borrowers. They estimate that in 1928 more than $250,000,000 in loans of this type will be made. To take care of this business more than 200 companies have been formed this year, increasing their number from 2,398 to 2,636. This growth alone indicates the increasing importance of the small borrower. On the other hand, these small loans contribute zest to the commercial buying power of the people since the bulk of their borrowing is done to purchase additional comforts and necessities of life. Statistics have shown that losses in such loans are slight. It is a growing business.

RESERVE YOUR STOCK BY WIRE OR TELEPHONE

It is essential that you act promptly to secure the desired amount of this issue of stock.

Telegrams may be sent collect.

Reservations will be made in the order received pending confirmation and check by mail.

ACT PROMPTLY!

Exhibit S. 6. Radio Talks.

EXHIBIT S. 6.

Photostatic copy of series of radio talks consisting of 43 pages.

Good evening ladies and gentlemen:

The Financial Investment Corporation of 605 Broad Street, Newark, New Jersey are specialists in Industrial Loan Company issues, and we are taking this opportunity to explain to you the different features in connection with investments.

Everyone in making investments feels that first of all they want a safe place to invest their money, and secondly, they want to be assured that the income from their investment will show a good return.

There are some who consider bonds as a profitable and safe place to invest their money. We feel that that judgment is good if one is satisfied with just a rental of their money but first let us analyze just what an investment is.

We will assume, whatever bonds you buy are good and perfectly safe from an investment standpoint. But you only get a stated income each year and no more regardless of the amount of money your money helps to make.

Then again there are some who prefer investing their money in preferred stocks, and assuming these preferred stocks are perfectly safe from an investment standpoint. Like the bonds the income stays the same the year over. There can be no more income for them.

Then again there are some who prefer to buy common stock of good companies in which case the income depends entirely upon the business, and its management and the amount of profits they can make. These profits must be large enough to first pay interest on their outstanding preferred stock and bonds, if any, and what is left rightfully belongs to the holders of common stock.

In buying stock in a company whose business it is to produce something to sell, and where they depend upon

the buying public, there is always a chance of the buying public curtailing, which comes sometimes from business depression, or the change of style of the commodity sold. You have often heard the merchant say: "Business is slow, or the public is not buying" all of which means, no business so that the investment in that field while it may have every indication of a profitable business this year, who can tell what twelve nights later will show?

As against this type of investment, let us make a comparison with the Banking business. It is conceded by the very best authorities that the banking business is the safest and at the same time the most profitable in the world. First, because they do not manufacture and have no products to sell. The only commodity they handle is *money.* Which never depreciates or changes style and is constantly in demand.

The profits made in the banking business come primarily from the *loaning* of money, and in making such loans, banking institutions naturally take very good security on the Loans. Thus protecting them from losses which speaks for the safety of an investment in their shares and the natural increase in price due to the large dividends they pay, or the profits they apply to surplus.

There is a branch of the banking business that is coming to the front in leaps and bounds, known as Industrial Banking. These institutions are working under a special license and their business is under the supervision of the banking department of the state in which they are incorporated. They cater to about 85% of the population. The demand for this class of business is far greater than the institutions are prepared to take care of, which necessitates the increase in their capital to meet this demand.

We feel that the person with the available funds who can buy some of the shares of a successful industrial banking company when their issues are first offered will not only make a safe investment but a very profitable one, because their dividends are above the average and will

naturally increase, which of course, will increase the value of the shares, and thus, while giving the investor a good return on his investment, will also give him an opportunity to realize considerable profit in the value of the shares.

We are now offering for public subscription, a limited number of shares of 6% participating preferred stock in one of these companies, who, on July first paid a dividend at the rate of 10% per annum. Let me explain just what is meant by 6% participating preferred stock: First, being preferred is a protection to the investor. It is a first lien on the entire assets of the institution. No bond issues or other obligations to come before it. After the regular 6% is paid, it participates up to 50% in all additional sums set aside for dividends: Thus the dividend paid in July at the rate of 10% per annum was as follows, 6% regular and 4% participation.

A limited number of shares of this stock is being offered at $15.00 per share, and one in which we urge you strongly to invest. They may be purchased on a convenient payment plan.

Write us at once for full particulars without obligation and we will be glad to supply them. Address all letters Financial F-I-N-A-N-C-I-A-L Investment Corporation, 605 Broad street, Newark, New Jersey, or to avoid unnecessary delay, telephone Mulberry M-U-L-B-E-R-R-Y 1313, or you may write to your station, W.C.D.A. in New York City, and they will forward your inquiry to us. I will repeat the address, and request that you make a note of it and write us if you are interested in making safe and profitable investment—write to—

Financial Investment Corporation,
605 Broad Street,
Newark, New Jersey.

Exhibit S. 6. Radio Talks.

Good Evening Ladies and Gentlemen:

The last yearly report of the Department of Banking and Insurance of the State of New Jersey shows that Industrial Banking Institutions earned an average of about 30% on the capital invested. This is a striking example of the earning power of this type of Corporation. The last report of the comptroller of the currency of the United States, on National Bank operations for the fiscal year ending June 30th, 1927, reveals that twenty-three New York National Banks earned an average of better than 28% on their capital stock for that period and disbursed about 18% in dividends. For all National Banks the average was over 17% on combined capital stock.

The enormous sum of 500 million dollars was disbursed to investors during the month of October 1928, in the form of dividends, and interest. This is the largest amount ever paid to investors during that month, as a result of new issues during the past year, and increases in dividend rates by many corporations and financial institutions.

Industrial Banking leads all other forms of investment. The nation's most profitable business and no doubt the safest business in the world is the business of banking. It is estimated that the enormous sum loaned by commercial banks serves only about 20% of the population. Where do the other 80% go for their banking needs?

The industrial banking business is in a position to secure 80% of the population's credit requirements. Industrial banking is an important part of our present day banking structure. It answers the needs of about 80% of our population, that important group of citizens known as the middle class, the industrial backbone of the country, who enjoy a reputation for paying their bills promptly and whose income will allow them to make monthly payments on industrial loans.

Industrial Loan Institutions engaged in the business of Industrial banking are licensed, bonded and supervised

by the State Department of Banking and Insurance of New Jersey.

Like any other banking institution it has two primary functions:

It answers the need of those having limited, or no credit facilities at convenient banks, supplies funds for immediate needs, and provides a convenient method of payment.

It offers to the public an opportunity to invest in its participating preferred stock with an income yield above the average rate.

Loans are made to salaried employees, wage earners, merchants, manufacturers and professional men and women of good character and earning power. These loans are secured by chattel mortgages or notes, endorsed by property owners or reputable business men, who must be satisfactory to this corporation and are required to pay the loan, should the borrower fail to make payments as agreed.

The loans are unusually safe and collectible, because the collateral is several times greater than the loan made.

All available figures show no record of an industrial banking company ever having failed since the uniform industrial banking laws went into effect. This record is unmatched by any other line of business.

The Industrial Loan Corporation, whose shares we, as brokers, offer, make loans up to $300.00 at the legal rate of interest as authorized by the State of New Jersey. Reductions in the amounts loaned are made by the borrowers each month, and this principal and interest being payable in monthly installments, gives the corporation a rapid turnover of capital.

The Industrial banking business is a sound type of financial enterprise. The necessity for borrowing money goes back to the beginning of history and will always exist. Money knows no dull season and is ever in demand. This corporation can use additional funds to meet the

great demand for Industrial Loans and offers to the public an opportunity to put their money to work where it will earn a consistent return and insure value and protection. The funds of the corporation are never tied up in permanent investments, such as land, building, machinery or equipment, nor in any long term loans.

The assets of the corporation consists at all times of cash, liquid accounts receivable, and notes. The entire funds of the corporation are thus either in the corporation's depositories or in self-liquidating loans with a wide margin or safety and adequate security.

We are now offering for public subscription a block of 6% participating preferred stock at $15.00 per share. This offering participates up to 50% in the net earnings of the corporation which is an unusually attractive feature of this stock offering.

The Directors have authorized this issue to participate in an extra dividend of 4% as of July 1, which places the offering on a 10% dividend basis. You should by all means make your inquiries and reservations promptly.

Address all letters and reservations to

Public Service Finance Corp.,
810 Broad Street, Newark, N. J.
Station W.A.B.C. New York City or telephone Mulberry 1313 or 1314.

Thank you.

Good evening ladies and gentlemen:

America has become a nation of investors, which in reality, has made prosperous times and made the United States the leading financial country of the world.

It is not uncommon for a single corporation to have ten, twenty or even thirty thousand stockholders, and these stockholders are receiving checks every three months, in other words they now have an income.

Exhibit S. 6. Radio Talks.

There are more opportunities to make money today than there ever have been, and the United States is the place to make it. We have the greatest financial institutions of any country in the world, and these financial institutions are composed of many stockholders who also receive checks every three months on their investments.

Right now, I want to say, that I consider a person who is fortunate enough, to own stock in one of our banking institutions, a privileged citizen. Why do I say that? For this reason, All financial institutions to which life is granted by the State, are created to perform a specialized work, in the interest of society such as National Banks, State Banks, Trust Companies, savings banks and industrial loan institutions.

These financial institutions are either under Federal or State Laws. And this, ladies and gentlemen, is a factor of safety not found in other lines of investment. Banking is recognized as the safest and most profitable business in the world. I would like to have the time to explain just how banks make such large profits, yes, by definite appointment, I will have a member of our organization call, and explain, the details of the banking business, I want you to know all there is to know regarding this offering there are many instances where $500.00 invested in a few shares of bank stock have paid profits ranging from $2,000.00 to $13,000.00 in increased valuation, entirely aside from dividends paid to the investor. A statement made before a congressional committee in Washington showed that $690,000.00 put into 5 different banks increased in value to $3,038,00. A profit of $2,348,00 in addition to which several hundred thousand dollars were distributed in cash dividends.

And now, ladies and gentlemen, I bring to you an opportunity to purchase stock in an industrial banking institution that is licensed, bonded, and its business supervised by the Department of Banking and Insurance of the State

of New Jersey. This Financial Institution is offering for public subscription a 6% cumulative preferred stock that participates up to 50% in the entire profits, at $15.00 per share, and is now on a 10% dividend basis, payable quarterly. This institution is developing by leaps and bounds. As a matter of fact it is planned to open a branch office next month which should prove to be very profitable for the stockholders.

In the near future an important announcement will be made relative to a price advance. Do not let this opportunity pass as now you may purchase this stock at $15.00 per share.

My firm belief, is, that you will soon seen this financial institution the leading one in its field, in the State of New Jersey located at the busiest corner in the state.

There is much to tell you, but my time is too limited. We have prepared a leaflet which explains in detail the merits of this investment offering. Simply write or 'phone and we will forward complete information without obligation on your part. The stock may be purchased for cash or on a convenient payment plan at $15.00 per share.

Our services are at your command. The office will be open until 11 o'clock tonight and I suggest that you telephone now or write at once for additional information or make a reservation for the number of shares desired pending receipt of full particulars. Address all letters and telegrams to:

Financial Investment Corporation,
605 Broad Street., Newark, N. J.
or telephone Mulberry 1313.

I will repeat the address:

Financial Investment Corporation,
605 Broad Street., Newark, N. J.
or telephone Mulberry 1313.

Exhibit S. 6. Radio Talks.

Good Evening Ladies and Gentlemen:

Our one thought in bringing this message to you over the radio is to give you first hand information regarding the securities of the Universal Finance Corporation, an Industrial Banking Institution, this is established, licensed, bonded and its business supervised by the Department of Banking and Insurance of the State of New Jersey.

We are justly proud to have the opportunity to offer the public such a splendid investment and in an Industrial Loan Institution that has accomplished more in the same length of time than any other similar institution in the United States.

This institution whose securities we are offering is blazing the way and bringing the small loan business to the front in the investment field.

Certainly we are proud and you should grasp the opportunity. We are selling these securities, throughout the country and are confident the holders of this stock in addition to receiving handsome quarterly cash dividends will see their holdings increase in value even beyond your own expectations. We take pleasure in recommending this issue, feeling as we do, that every person owning this security will make a lot of money. Just a few more words about the security itself.

We are offering for public subscription a 6% Cumulative Preferred Participating Stock, now on a 10% Dividend Basis.

Let me explain what 6% Preferred Stock with a 50% Participation Means: First, the stock is preferred and is a first lien on all the assets of the company, which by the way is all cash or negotiable notes. A dividend of 6% is guaranteed and the participating feature gives in addition 50% of all additional profits, thus the dividend of 10% is made up as follows: 6% regular dividend and 4% Participation. Consider the earning power of your money in this investment; the great possibilities for increase in

the value of shares and then say to your yes, and the corporation is licensed, bonded and its business supervised by the Department of Banking and Insurance of the State of New Jersey. That in itself is the reason the public at large are buying this stock for investment. Right now take advantage of this opportunity. We have prepared a leaflet explaining the merits of this investment offering which we will gladly forward to you without obligation.

Address all letters and telegrams to:

Financial Investment Corporation,
605 Broad Street,
Newark, New Jersey.
or telephone Mulberry 1313.

Good Evening Ladies and Gentlemen:

The purpose of this short talk tonight is to make even more friends for our company, and the surest way to do that is to make money for them. Our company, we are glad to say, has many friends in many states. Every week this number of friends is increasing. There is a logical reason for this condition. Because we are wisely recommending the securities of an Industrial Loan Corporation, whose record and prospects are most convincing and unusual.

The securities of this Industrial Loan Company, which we are now offering are on a 10% Dividend Basis. I am convinced that you will want to receive all the facts and know how to increase your income.

We are offering for public subscription a 6% Cumulative Preferred Stock, that participates up to 50% in the entire net profits of the company. The present price of these shares is $15.00.

We know that the person who invests his money in a financial institution is bound to reap handsome profits.

Exhibit S. 6. Radio Talks.

A Financial Institution whose business is that of lending money, and this function conducted under a permit granted by the Department of Banking and Insurance of the State of New Jersey. Such a business does not have any of its capital tied up in machinery, equipment or manufacturing processes. Its business is that of money merchandising and all its capital is working all of the time.

The dividend record of Industrial Loan Companies of this character is very attractive, in that it stands out, far above other lines of business. As stated before, we are offering at this time a limited number of shares in one of these financial institutions at $15.00 per share. They may be purchased for cash or on a convenient payment plan. It is a participating stock. It is, moreover, a preferred stock that participates up to 50% in all profits of the company. It is now on a 10% dividend basis, and this we expect to see increased soon.

We recommend this stock for immediate purchase. Some important announcements will very shortly be made that should benefit those who make their reservations now.

There is much to tell you about this attractive investment offering and we know that we are talking to a very large radio audience, nightly, judging from the sales coming in from nearby, and distant points.

Our time is so limited that we cannot give you the complete details in this talk. We have prepared, however, descriptive literature that this explains this offering in detail, and how you may increase your income which we will send you on request.

We reserve the right to allot less than the amount applied for, and also advance the price without further notice.

Telephone or write at once to

Financial Investment Corp.,
605 Broad street, Newark, N. J.
or telephone Mulberry 1313.

Exhibit S. 6. Radio Talks.

This issue is also being offered in Buffalo, New York, by the

Investment House of
M. B. Shepard Company,
448 Ellicott Square,
Buffalo, New York.

Telephone or write them or direct to

Financial Investment Corp.,
605 Broad street,
Newark, New Jersey.

Good evening ladies and gentlemen:

Judging from the thousands of letters, telegrams and telephone calls we have received, it is very evident the investing public wants to share in the profits of the banking business— A safe, sound, established business, that dates back many hundred years. It is my firm belief that every man and woman should have a portion of their funds invested in financial organizations that are under state control. As the public becomes more familiar with banking securities, as to the safety of principle and large profits, they will automatically invest in banking securities whenever the opportunity presents itself.

Just let me quote a few lines from Friday's night edition of October 5th of the New York Evening Journal, page 36, with reference to industrial banking, and the great opportunity for investment.

Quote: "That investment capital will find its way into the business of financing small loans. Just as it has been attracted to other recognized industries, is the conclusion of a study of the small loan industry just completed, which says:

"The business of lending small amounts of money of supplying the constant demand of many millions of honest and worthy people who need temporary financial help—is

on the threshold of a great development. It has been reformed and regenerated in half the states of a great development. It has been reformed and regenerated in half the states of the Union, in almost all the most important states, and private capital is flowing into it because it has shown itself to be a safe and profitable form of investment.

The safety and profitability of the business are attracting capital to the small loan field, in the same manner that it finds its way into other recognized industries. The safe and profitable character of the small-loan business, so conducted and legally supervised is proving attractive to outside capital as an investment." (End of quote.)

Coming from such an authority as this, it should prompt you to take advantage of this investment offering without delay.

I consider a person who is fortunate enough to own stock in one of our banking institutions, is an enviable position for the reason that if he holds his stock, he is bound to accumulate wealth. Understand, all financial institutions to which life is granted by the State, are created to perform a specialized work, in the interests of society such as National Banks, State Banks, Trust Companies, Savings Banks and Industrial Banking Institutions.

These financial institutions are either under Federal or State Laws. And this, ladies and gentlemen, is a factor of safety not found in other lines of investment. Banking is recognized as the safest and most profitable business in the world. There are many instances where $500.00 invested in a few shares of bank stock have paid profits ranging from $2,000.00 to $13,000.00 in increased valuation, entirely aside from cash dividends paid to the investor.

And now, ladies and gentlemen, I bring to you an opportunity to purchase stock in an established loan institution

that is licensed bonded and its business supervised by the Department of Banking and Insurance of the State of New Jersey. This financial institution is offering for public subscription a 6% cumulative preferred stock that participates up to 50% in the entire profits, at $15.00 per share, and is now on a 10% dividend basis, payable quarterly. This institution is developing by leaps and bounds, as a matter of fact, it is planning to open a branch office this month which should prove to be very profitable for the stockholders.

In the near future an important announcement will be made relative to a price advance. Do not let this opportunity pass, as now you may purchase this stock at $15.00 per share.

My firm belief is that you will soon see this financial institution the leading one in its field, in the State of New Jersey, located, as it is, at the busiest corner in the state.

There is much to tell you, but my time is too limited. We have prepared a leaflet which explains in detail the merits of this investment offering. Simply write or phone and we will forward complete information without obligation on your part.

The stock may be purchased for cash or on a convenient payment plan at $15.00 per share. Our office will be open until 11 o'clock every night next week and I suggest that you call at our office or telephone or write at once for additional information or make a reservation for the number of shares you desire.

The stock is now on a 10% dividend basis.

In fairness to yourself act promptly. Address all letters and telegrams for reservation and additional information to Financial Investment Corp., 605 Broad street, Newark, N. J. Mulberry 1313.

Our office will be open every night until 11 o'clock for the convenience of those desiring to phone for reservations or information. Telephone Mulberry 1313. Thank you.

Exhibit S. 6. Radio Talks.

Good Evening Ladies and Gentlemen:

Financial Investment Corporation, has, through the medium of the radio, made public offerings of Industrial Loan Company Securities at various times during the past year.

In each instance, the public's desire to participate in the profits of the industrial loan business has been convincingly proved, by virtue of the fact that every issue offered by Financial Investment Corporation, as broker has been fully subscribed.

In no instance has anyone of the issues thus subscribed to, been on less than a 10% DIVIDEND BASIS. The holders of such shares are rightfully pleased with their investment, as well as with the Natural Appreciation in the value of the shares themselves.

A few weeks ago Financial Investment Corporation, announced through this medium, an offering of 6% Cumulative Preferred Stock, and in ESTABLISHED, SUCCESSFUL, INDUSTRIAL LOAN CORPORATION. It is this particular security with which we would to make you acquainted this evening.

The purpose of this short talk tonight is to make even more friends for our company, and the surest way to do that is to make money for them. Our company, we are glad to say, has many friends in many states. Every week this number of friends is increasing, and there is a logical reason for this condition. Because we are wisely recommending the securities of an industrial loan company, whose record and prospects are most convincing and unusual.

The securities of this industrial loan company which we are now offering are on a 10% dividend basis, payable quarterly.

This offering, for public subscription, is a 6% CUMULATIVE PREFERRED STOCK, that participates up to

50% in the entire net profits of the company. The present price of these shares is $15.00.

We know that the person who invests his money in a financial institution, properly managed, is BOUND to reap HANDSOME PROFITS. A Financial Institution whose business is that of lending money, and this function conducted under a permit granted by the Department of Banking and Insurance of the State of New Jersey. Such a business does not have any of its capital tied up in machinery, equipment or manufacturing processes. Its business is that of money merchandising, and all its capital is working all of the time.

The dividend record of Industrial Loan Companies of this character is very attractive, in that it stands out, far above other lines of business, for high earnings as stated before. We are offering at this time a limited number of shares in one of these financial institutions at $15.00 per share. They may be purchased for cash or on a convenient payment plan. It is a participating stock. It is, moreover, a preferred stock that participates up to 50% in all profits of the company. It is now on a 10% dividend basis and this we expect to see increased soon.

We recommend this stock for immediate purchase. Some important announcement will very shortly be made that should benefit those who make their reservations now.

There is much to tell you about this attractive investment offering, and we know that we are talking to a very large radio audience, nightly, judging from the sales coming in from nearby and distant points.

Our time is so limited that we can not give you complete information in this talk. We have prepared, however, descriptive literature that explains this offering in detail, and how you may increase your income, which we will gladly send to you on request.

50% in the entire net profits of the company. The present price of these shares is $15.00.

We know that the person who invests his money in a financial institution, properly managed, is BOUND to reap HANDSOME PROFITS. A Financial Institution whose business is that of lending money, and this function conducted under a permit granted by the Department of Banking and Insurance of the State of New Jersey. Such a business does not have any of its capital tied up in machinery, equipment or manufacturing processes. Its business is that of money merchandising, and all its capital is working all of the time.

The dividend record of Industrial Loan Companies of this character is very attractive, in that it stands out, far above other lines of business, for high earnings as stated before. We are offering at this time a limited number of shares in one of these financial institutions at $15.00 per share. They may be purchased for cash or on a convenient payment plan. It is a participating stock. It is, moreover, a preferred stock that participates up to 50% in all profits of the company. It is now on a 10% dividend basis and this we expect to see increased soon.

We recommend this stock for immediate purchase. Some important announcement will very shortly be made that should benefit those who make their reservations now.

There is much to tell you about this attractive investment offering, and we know that we are talking to a very large radio audience, nightly, judging from the sales coming in from nearby and distant points.

Our time is so limited that we can not give you complete information in this talk. We have prepared, however, descriptive literature that explains this offering in detail, and how you may increase your income, which we will gladly send to you on request.

position for the reason that if he holds his stock, he is bound to accumulate wealth.

Understand, all financial institutions to which life is granted by the state, are created to perform a specialized work in the interests of society such as national banks, state banks, trust companies, savings banks and industrial loan institutions.

These financial institutions are either under federal or state laws. And this, ladies and gentlemen, is a factor of safety not found in other lines of investment. Banking is recognized as the safest and most profitable business in the world. There are many instances where $500.00 invested in a few shares of bank stock have paid profits ranging from $2,000.00 to $13,000.00 in increased valuation, entirely aside from cash dividends paid to the investor.

And now, ladies and gentlemen, I bring to you an opportunity to purchase stock in an established industrial loan institution that is licensed bonded and its business supervised by the department of banking and insurance of the State of New Jersey. This financial institution is offering for public subscription a 6% cumulative preferred stock that participates up to 50% in the entire profits, at $15.00 per share, and is now on a 10% dividend basis, payable quarterly. This institution is developing by leaps and bounds, as a matter of fact, it is planning to open a branch office this month which should prove to be very profitable for the stockholders.

In the near future an important announcement will be made relative to a price advance. Do not let this opportunity pass, as now you may purchase this stock at $15.00 per share.

My firm belief is that you will soon see this financial institution the leading one in its field, in the state of New Jersey, located as it is, at the busiest corner in the state.

Exhibit S. 6. Radio Talks.

There is much to tell you, but my time is too limited. We have prepared a leaflet which explains in detail the merits of this investment offering.

In conclusion, Financial Investment Corporation is offering for public subscription its 6% preferred participating stock at $15.00 per share. This stock may be purchased on a deferred payment plan convenient to the buyer. We invite you to write in for full particulars regarding this splendid investment:—

Financial Investment Corporation,
605 Broad street, Newark, N. J.

For the benefit of those who have just tuned in, let me summarize the unusual features of this investment.

FIRST: This industrial banking corporation is licensed, bonded and supervised by the Department of Banking of the State of New Jersey.

In other words, its business is under state control.

SECOND: Directed by men of experience in corporate matters and enjoying the highest reputation in the eyes of the public.

THIRD: Offering a 6% cumulative preferred stock, participating up to 50% in the net earnings of a company engaged in the banking business. Price is $15.00 per share and may be purchased on a deferred payment plan. In the near future an important announcement relative to a price advance will be made.

FOURTH: The stock is now on a 10% dividend basis.

In fairness to yourself act promptly. Address all letters and telegrams for reservation and additional information to:

Financial Investment Corporation,
605 Broad street, Newark, N. J.

or phone Mulberry 1313. Our office will be open every night until 11 o'clock for the convenience of those desiring to phone for reservations or information. Telephone Mulberry 1313. Thank you.

Exhibit S. 6. Radio Talks.

Good Evening Ladies and Gentlemen:

Financial Investment Corporation, has, through the medium of the radio, made public offerings of Industrial loan company securities at various times during the past year.

In each instance, the public's DESIRE to participate in the profits of the industrial loan business has been convincingly proved, by virtue of the fact that every issue offered by Financial Investment Corporation, as brokers, has been FULLY subscribed.

In no instance has any one of the issues thus subscribed to, been on LESS than a 10% DIVIDEND BASIS. The holders of such shares are rightfully pleased with their investment, as well as with the NATURAL APPRECIATION in the value of the shares themselves.

A few weeks ago Financial Investment Corporation announced through this medium, an offering of 6% Cumulative Preferred Stock, in an ESTABLISHED SUCCESSFUL INDUSTRIAL LOAN CORPORATION. It is this particular security, with which we would like to make you acquainted this evening.

The securities of this industrial loan company which we are now offering are on a 10% dividend basis, payable quarterly.

This offering, for public subscription is a 6% Cumulative Preferred Stock, that participates up to 50% in the entire net profits of the company, the present price of these shares is $15.00.

We know that the person who invests his money in a financial institution properly managed, is BOUND TO REAP HANDSOME PROFITS. A Financial Institution whose business is that of lending money, and this function conducted under permit granted by the Department of Banking and Insurance of the State of New Jersey. Such a business does not have any of its capital tied up in machinery, equipment or manufacturing processes. Its

business is that of money merchandising, and all its capital is working all of the time.

The dividend record of Industrial Loan companies of this character is very attractive in that it stands out, far above other lines of business, for high earnings as stated before, we are offering at this time a limited number of shares in one of these financial institutions at $15.00 per share. They may be purchased for cash or on a convenient payment plan. It is a participating stock. It is, moreover, a preferred stock that participates up to 50% in all the profits of the company. It is now on a 10% dividend basis and this we expect to see increased soon.

We recommend this stock for immediate purchase. Some important announcements will very shortly be made that should benefit those who make their reservation now.

There is much to tell you about this attractive investmen offering and we know that we are talking to a very large radio audience, nightly, judging from the unusual response from the public.

Our time is so limited that we can not give you complete information in this talk. We have prepared, however, descriptive literature that explains this offering in detail, and how you may increase your income, which we will gladly send you on request.

We reserve the right to allot less than the amount applied for and also advance the price without further notice.

Telephone or write at once:

Financial Investment Corp.,
605 Broad street, Newark, N. J., telephone Mul. 1313.

This issue is being offered in Buffalo, N. Y., by the investment house of M. B. Shepard Co., 448 Ellicott Square, Buffalo, N. Y. Telephone them or write direct to Financial Investment Corp., 605 Broad street, Newark, N. J.

Exhibit S. 6. Radio Talks.

Good Evening Ladies and Gentlemen:

The purpose of this talk tonight is to place before serious minded people, a subject of serious thought, because it pertains to your income. America has become a nation of investors, which in reality has made prosperous times and made the United States the leading financial country in the world.

It is not uncommon for a single corporation to have ten, twenty or even thirty thousand stockholders. And these stockholders now have a steady income derived from dividends on invested capital saved from their earnings.

There are more opportunities to make money today than ever before, and in the United States is the place to make it. We have the greatest financial institutions in the world, and these financial institutions are composed of many stockholders, who also received checks every three months on their investments. Quoting from the daily paper, there was distributed on October 1st, over $500,000,000 in dividends—what portion of this did you receive?

Right now, I want to say, that I consider a person who is fortunate enough to own stock in one of our banking institutions a privileged citizen. All financial institutions to which life is granted by the State, are created to perform a specialized work, in the interests of society, such as national banks, state banks, trust companies, savings banks and industrial banking institutions.

These financial institutions are either under federal or state laws, and this, ladies and gentlemen, is a factor of safety not found in other lines of investment. Banking is recognized as the safest and most profitable business in the world.

This class of investment has always been looked upon as the rich man's investment—now comes the opportunity for the man of smaller means to enjoy the same privileges. There are many instances where $500.00 invested in a few shares of bank stock paid profits ranging from $2,000.00

Exhibit S. 6. Radio Talks.

to $13,000.00 in increased valuation entirely aside from dividends paid to the investor.

Now, ladies and gentlemen, I bring to you an opportunity to purchase stock in a company engaged in the industrial banking business, that is licensed, and its business supervised by the Department of Banking and Insurance of the State of New Jersey.

This financial institution is offering for public subscription a 6% Cumulative Preferred Stock that participates up to 50% in the entire net profits. We offer this stock at $15.00 per share, and it is now on a 10% dividend basis, payable quarterly.

We have every reason to believe that a most important announcement will shortly be made relative to an increase in the dividend rate of this security. Remember it is now on a 10% dividend basis.

Following this increase in the dividend rate there will naturally be a justifiable increase in the price of the shares.

Do not let this opportunity pass, as you may still purchase this stock at $15.00 per share, and it may be purchased on a convenient payment plan. There is much to tell you but my time is too limited. We have prepared descriptive literature which explains in detail the merits of the splendid investment. Simply write or telephone and we will forward complete information without obligation on your part.

Our services are at your command, and I suggest that you write at once for additional information and make a reservation for the number of shares desired, pending receipt of full particulars. As this allotment is being rapidly subscribed at this price. Address all letters and telegrams to

Financial Investment Corporation,
605 Broad street, Newark, N. J.

Exhibit S. 6. Radio Talks.

Our office will remain open for your convenience until 11 o'clock this evening to furnish you with any additional information you may request by telephone.

I will repeat the address:

Financial Investment Corporation,
605 Broad street, Newark, N. J.

Mulberry 1313 is the phone number. Please feel at liberty to call that number this evening and receive additional information.

For those of our listeners, who prefer, simply call Western Union and instruct the operator to send us a wire collect, making either a reservation or asking for additional information. We will pay the charges. Please be sure to give your name and ADDRESS.

Thank you.

Good evening ladies and gentlemen:

Last Wednesday we made an announcement relative to an increase in the dividend rate and also an advance in the price of the shares of the industrial loan institutions stock, we are now offering for public subscription.

The directors of the corporation whose stock we are offering, announced that due to the exceptional progress made by the corporation, this year, it was voted to increase the present dividend of 10% to 12% per annum, effective January 1st, 1929. This dividend to be paid monthly in equal amounts of 1% per month. Also to advance the price of the shares from $15.00 to $16.00 a share, effective, December 12th, 1928. Therefore, only tonight and tomorrow remain in which you may buy these shares at the $15.00 price.

Surely, you will want to share in the profits of the industrial loan business, but to take advantage of the present $15.00 price, you will have to act at once, as the price

goes to $16.00 tomorrow, Wednesday, December 12th, 1928.

National and State Banks are very largely local institutions, and confine their operation almost entirely to the communities in which they are located.

Some of the larger banks accommodate customers outside of their own immediate vicinities, but these are quite limited in number. Industrial Loan Institutions operate on a somewhat different system.

They extend accommodations in many different localities and seek to serve worthy individuals over a wider area. Many notable successes have been registered by corporation engaged in the Industrial Loan Business. The field is so enormous that these companies frequently show a capital turnover of surprising volume.

It is a matter of statistical history that out of every 100 financial institutions, 99 are successful; pay good dividends to their stockholders keep on paying year after year, and frequently return the original purchase price to their owners many times over.

The industrial loan corporation whose shares we are offering has been established on a firm dividend paying basis, at present paying 10% and this to be increased January 1st, 1929, to 12%. What is more, it points to its earning record with confidence and pride, confident that it will continue to earn and pay dividends in increasing volume, proud that it is now in a position to choose its own stockholders who will be given a real chance to make large profits without taking the usual risks that accompany the ordinary investment. And now, as I extend to you the opportunity of sharing profits in this most profitable business, remember that Industrial Loan institutions deal in money. Further, their business is under the supervision of the State Department of Banking, a factor of safety not found in other lines of investment.

Exhibit S. 6. Radio Talks.

You are offered a 6% Preferred Stock and Participating in addition to the 6% up to 50% in the entire net profits. Therefore, you are not renting your money, but actually making your money work for you. Dividends are now paid quarterly. Commencing January 1st, however, they will be paid monthly. The stock is now on a 10% basis and this to be increased January 1st, 1929, to 12%. The stock is now being offered at $15.00 per share.

The stock may be purchased on a convenient payment plan. We will be pleased to have you write the Financial Investment Corporation, 605 Broad street, Newark, New Jersey, for additional information regarding this splendid, safe investment. The telephone number is Mulberry 1313.

In fairness to yourself get the full details regarding this investment. Our office will remain open for your convenience until 12 o'clock this evening to furnish you with any additional information you may request by telephone. The telephone number is Mulberry 1313.

If you are sincerely interested and want to make a splendid investment that should make you considerable money, go now, to your telephone, and call a telegraph office, requesting them to send, Financial Investment Corporation, 605 Broad street, Newark, N. J., a telegram collect. We will pay the charges. Give your name and address, and make a reservation for the number of shares desired. We will see that your telegrams receive prompt attention, and will protect you before the price of these shares is advanced.

I will repeat the address:

Financial Investment Corp.,
605 Broad street,
Newark, N. J.

Telephone Mulberry 1313, which phone can be reached until 12 o'clock this evening.

Thank you.

Exhibit S. 6. Radio Talks.

Good Evening Ladies and Gentlemen:

The directors of the corporation, whose stock we are offering, announced that due to the exceptional progress made by the corporation this year, it was voted to increase the present dividend of 10% to 12% per annum, effective January 1st, 1929.

This dividend to be paid monthly in equal amounts of 1% per month. Also to advance the price of the shares from $15.00 to $16.00 a share, effective today, December 12th, 1928. Therefore, this is the last day you may buy these shares at the $15.00 price.

Surely, you will want to share in the profits of the Industrial Loan Business, but to take advantage of the present $15.00 price you will have to act at once, as the price goes to $16.00 at midnight tonight.

National and State Banks are very largely local institutions, and confine their operations almost entirely to the communities in which they are located.

Some of the larger banks accommodate customers outside of their own immediate vicinities, but these are quite limited in number. Industrial Loan institutions operate on a somewhat different system. They extend accommodations in many different localities and seek to serve worthy individuals over a wider area. Many notable successes have been registered by corporation engaged in the industrial loan business.

The field is so enormous that these companies frequently show a capital turnover of surprising volume. It is a matter of statistical history that out of every 100 financial institutions, 99 are successful; pay good dividends to their stockholders, keep on paying year after year and frequently return the original purchase price to their owners many times over.

This corporation, whose shares we are offering is established on a firm dividend paying basis, at present paying 10% and this to be increased January 1st, 1929, to 12% and paid monthly at the rate of 1% per month.

Exhibit S. 6. Radio Talks.

What is more, it points to its earning record with confidence and pride; confident that it will continue to earn and pay dividends in increasing volume, proud that it is now in a position to choose its own stockholders who will be given a real chance to make large profits without taking the usual risks that accompany the ordinary investment. And now as I extend to you the opportunity of sharing profits in this most profitable business, remember that industrial loan institutions deal in money. Further, their business is under the supervision of the State Department of Banking, a factor of safety not found in other lines of investment.

You are offered a 6% Preferred Stock and participating in addition to the 6% up to 50% in the entire net profits. Therefore, you are not renting your money, but actually making your money work for you. Dividends are paid quarterly.

The stock may be purchased on a convenient payment plan, and if you phone, telegraph, or write tonight, we will protect you at the $15.00 price. We will be pleased to have you write the Financial Investment Corporation, 605 Broad street, Newark, N. J. for additional information regarding this splendid, safe investment. The telephone number is Mulberry 1313. In fairness to yourself get the full details regarding this investment. Our office will remain open for your convenience until 12 o'clock this evening to furnish you with any additional information you may request by telephone. The telephone number is Mulberry 1313. If you can not reach our office by telephone tonight and are sincerely interested and want to make a splendid investment that should make you considerable money, go now, to your telephone, and call a telegraph office requesting them to send Financial Investment Corporation, 605 Broad street, Newark, New Jersey, a telegram collect. We will pay the charges. Give your name and address and make a reservation for the number of shares desired.

Exhibit S. 6. Radio Talks.

All telegrams and phone calls received tonight will be protected at the $15.00 price, also all letters mailed tonight, even though from distant points, will be protected at the $15.00 price.

I will repeat the address:

Financial Investment Corporation,
605 Broad street, Newark, New Jersey.
Telephone Mulberry 1313, which phone can be reached until 12 o'clock this evening.

Thank you.

Good evening Ladies and Gentlemen:

The directors of the industrial loan corporation, whose stock we are offering announced, that due to the exceptional progress made by the corporation this year, it was voted to increase the present dividend of 10% to 12% per annum, effective, January 1st, 1929. The dividend to be paid monthly in equal amounts of 1% per month.

National and State Banks are very largely local institutions, and confine their operations almost entirely to the communities in which they are located. Some of the larger banks accommodate customers outside of their own immediate vicinities, but these are quite limited in number. Industrial loan institutions operate on a somewhat different system.

They extend accommodations in many different localities and seek to serve worthy individuals over a wider area. Many notable successes have been registered by corporations engaged in the industrial loan business. The field is so enormous that these companies frequently show a capital turnover of surprising volume. It is a matter of statistical history that out of every 100 financial institutions, 99 are successful; pay good dividends to their stockholders, keep on paying year after year and frequently return the original purchase price of their owners many times over.

Exhibit S. 6. Radio Talks.

This corporation, whose shares we are offering is established on a firm dividend paying basis, at present paying 10% and this to be increased, January 1st, 1929, to 12% and paid monthly at the rate of 1% per month. What is more, it points to its earning record with confidence and pride; confident that it will continue to earn and pay dividends in increasing volume, proud that it is now in a position to choose its own stockholders who will be given a real chance to make large profits without taking the usual risks that accompany the ordinary investment. And now as I extend to you the opportunity of sharing profits in this most profitable business remember that industrial loan institutions deal in money. Further, their business is under the supervision of the State Department of Banking.

You are offered a 6% Preferred Stock and participating in addition to the 6% up to 50% in the entire net profits, at the sixteen dollar price, therefore, you are not renting your money, but actually making your money work for you.

We will be pleased to have you write the Financial Investment Corporation, 605 Broad street, Newark, New Jersey, for additional information regarding this splendid, safe investment, or tomorrow between 9 and 5 you may telephone Mulberry 1313.

In fairness to yourself get the full details regarding this investment.

In conclusion we are offering for public subscription a 6% Preferred Stock participating up to 50% in the net profits; in an institution engaged in the industrial loan business.

The stock is now on a 10% dividend basis, however, the directors voted to increase the 10% rate to 12% effective January 1st, 1929. This action by the Board of Directors was taken due to the fact that the business is growing very rapidly, and also consider that the stockholders are in reality partners, therefore, entitled to receive the full

Exhibit S. 6. Radio Talks.

benefits derived from this most profitable business. The price of these shares is $16.00 and may be purchased on a convenient payment plan.

For full details write:

Financial Investment Corporation,
605 Broad street,
Newark, New Jersey,

or telephone Mulberry 1313, between the hours of 9 and 5 tomorrow.

This corporation, whose shares we are offering is established on a firm dividend paying basis, at present paying 10%, and this to increased January 1st, 1929, to 12%, and paid monthly at the rate of 1% per month. What is more, it points to its earning record with confidence and pride; confident that it will continue to earn and pay dividends in increasing volume, proud that it is now in a position to choose its own stockholders who will be given a REAL CHANCE to make large profits without taking the usual risks that accompany the ordinary investment. And now as I extend to you the opportunity of sharing profits in this most profitable business, REMEMBER that industrial loan institutions DEAL IN MONEY. Further, their business is under the supervision of the State Department of Banking, a factor of safety not found in other lines of investment.

You are offered a 6% Preferred Stock and Participating in addition to the 6% entire net profits. Therefore, you are not renting your money, but actually making your money work for you. Dividends are now paid quarterly.

If you phone, telegraph, or write tonight we will protect you at the $15.00 price. This stock may be purchased on a convenient payment plan. We will be pleased to have you write the Financial Investment Corp., 605 Broad street Newark, N. J., for additional information regarding this splendid, safe investment. The telephone number is Mulberry 1313.

Exhibit S. 6. Radio Talks.

In fairness to yourself get the full details regarding this investment. Our office will remain open for your convenience until 12 o'clock this evening to furnish you with any additional information you may request by telephone. The telephone number is Mulberry 1313. If you can not reach our office tonight and are sincerely interested and want to make a splendid investment that should make you considerable money, go now to your telephone, and call a telegraph office, requesting them to send, Financial Investment Corporation, 605 Broad street, Newark, N. J., a telegram.

Good evening Ladies and Gentlemen:

Those of our radio audience who have been following our musical portfolio programs have doubtless listened to our short discussions on the subject of industrial loan investments.

The public response to these offerings of industrial loan securities has demonstrated the fact that a high grade offering is always attractive to the investing public.

Heretofore every allotment or issue that Financial Investment Corporation has offered through the medium of radio has been fully subscribed.

And now once again, we are pleased to announce that the allotment which has been offered in recent broadcasting has again been fully subscribed.

It is a source of gratification that a very large percentage of the subscribers to this last offering of Participating Preferred Stock had ALREADY been holders of shares of offerings previously made by this organization.

The price of the shares we are now offering is sixteen dollars, and on January 1st, 1929, the dividend will be increased from 10% to 12%. The Industrial Loan Corporation whose shares we are offering points to its record with confidence and pride; confident that it will con-

tinue to earn and pay dividends in increasing volume, proud that it is now in a position to choose its own stockholders who will be given a real chance to make profits without taking the usual risks that accompany the ordinary investment.

We have been advised by the Principal, whose shares of Industrial Loan Securities we have been offering, that the present allotment at the $16.00 price will be the LAST AND FINAL OFFERING made to the public which carries the 50% Participation Feature.

In order that there can be no misunderstanding as to this unusual feature of participation; let me briefly explain it at this point.

The stock carries first a six per cent. Preferred Rate; likewise it also gives to its holders the additional participation of UP to 50% of the net profits of the corporation.

Commencing January 1st, 1929, these shares will be on a 12% dividend basis. As the profits of the Industrial Loan Corporation increase, this dividend will also be increased.

What is more, hereafter any issues this Industrial Loan Corporation will bring out will not include the 50% Participation Feature, but, rather, will be limited to an ordinary Preferred rate.

Applications at the $16.00 price that became effective December 12th, 1928 are already being received. We would suggest, that in view of the fact that the final allotment at the $16.00 price bearing the 50% Participation Feature just referred to, is of a limited number of shares, that it is advisable for you to write us for additional information PROMPTLY.

These shares may be purchased on a convenient payment plan.

Exhibit S. 6. Radio Talks.

For full details write:

Financial Investment Corporation,
605 Broad street,
Newark, New Jersey,

or telephone Mulberry 1313, between the hours of nine and five any week day.

Good Evening Ladies and Gentlemen:

Last Wednesday evening we made an announcement relative to an increase in the dividend rate, and also an advance in the price of the shares of the Industrial Loan Institution's Stock, we are now offering for public subscription.

The directors of the corporation whose stock we are offering, announced that due to the exceptional progress made by the corporation this year, it was voted to increase the present dividend of 10% to 12% per annum, effective, January 1st, 1929. This dividend to be paid monthly in equal amounts of 1% per month. Also to advance the price of the shares from $15.00 to $16.00 a share, effective today, December 12th, 1928. Therefore, you may buy these shares at the $15.00 price, this is the last day.

Surely, you will want to share in the PROFITS of the industrial loan business, but to take advantage of the present $15.00 price you will have to act AT ONCE, as the price goes to $16.00 day after tomorrow, Wednesday, December 12th, 1928.

To further explain the exceptional advantage and merits of this security offering, let me first explain the difference between the RENTAL value of money and its ACTUAL EARNING POWER. Any MONIES you may invest at a fixed rate of interest, such as money invested in a first mortgage at 6%, is RENTED. In other words, when you RENT YOUR MONEY you do NOT share in the profits above the rental price.

Exhibit S. 6. Radio Talks.

Money that you invest in a SOUND AND GROWING BUSINESS in such a way that you will benefit from its continued growth and development HAS EARNING POWER. It may increase many times in value and so become an asset of great worth. And now something of the differentiation as regards Commercial and Industrial Financial Organizations.

This Financial Organization, whose shares we are offering is an Industrial Loan Institution of this character, bonded to the State, and ITS BUSINESS UNDER THE SUPERVISION of the Department of Banking and Insurance of the State of New Jersey.

I am going to make the statement, that the most profitable, and the safest business, in all the World, is the business of BANKING. Profits that are almost unbelievable, have grown out of comparatively small investments, in banking institutions and OVER AND OVER AGAIN men have become financially comfortable because they invested in the banking business in a small way. There are many instances where $500.00 invested in the stocks of Banking Institutions have paid profits ranging from $2,000.00 to $13,000.00 in increased VALUATION, entirely aside from dividends paid to the investor.

NATIONAL AND STATE BANKS are very largely local institutions, and confine their operations ALMOST ENTIRELY TO THE COMMUNITIES in which they are located.

Some of the larger banks accommodate customers OUTSIDE of their own IMMEDIATE VICINITIES, but THESE are quite limited in number. Industrial loan institutions operate on a somewhat different system.

THEY extend accommodations in many different localities and seek to serve worthy individuals over a wider area. Many NOTABLE SUCCESSES have been registered by corporations engaged in the industrial loan business. The field is so enormous that these companies fre-

quently show a capital turnover of SURPRISING volume. It is a matter of statistical history that out of every 100 FINANCIAL INSTITUTIONS, 99 are successful; pay good dividends to their stockholders, keep on paying year after year, and frequently return the original purchase price to their owners many times over.

COLLECT. We will pay the charges. Give your name and address, and make a reservation for the number of shares desired.

All telegrams and phone calls received tonight will be protected at the $15.00 price, also all letters mailed tonight even though from distant points will be protected at the $15.00 price.

I will repeat the address:

Financial Investment Corp.,
605 Broad St.,
Newark, N. J.

Telephone Mulberry 1313, which phone can be reached until 12 o'clock this evening.

Thank you.

In conclusion please be advised that Financial Investment Corporation of 605 Broad street, Newark, New Jersey has no connection with any other firm, company or institution in this state or any other state who may be broadcasting other than the corporation whose stock we are offering.

Good Evening Ladies and Gentlemen:

Those of our radio audience who have been following our musical portfolio programs have doubtless listened to our short discussions on the subject of industrial loan investment.

The public response to these offerings of Industrial Loan Securities has again demonstrated the fact that a high

grade offering is always attractive to the investing public.

Heretofore every allotment or issue that Financial Investment Corporation has offered through the medium of radio has been fully subscribed.

And now once again, we are pleased to announce that our most recent allotment which has been discussed in recent broadcasts has again been fully subscribed.

It is a source of gratification that a very large percentage of the subscribers to this last offering of Participating Preferred Stock had already been holders of shares of offerings previously made by this organization.

As announced on Wednesday evening the price of the shares which have been offered at $15.00 has now been advanced to $16.00 per share and that on January 1st, 1929, the dividend will be increased from 10% to 12%.

What is more, it points to its earning record with confidence and pride; confident that it will continue to earn and pay dividends in increasing volume, proud that it is now in a position to choose its own stockholders who will be given a real chance to make large profits without taking the usual risks that accompany the ordinary investment.

We have been advised by the principal whose shares of Industrial Loan Securities we have been offering, that the present allotment at the $16.00 price will be the last and final offering made to the public which carries the 50% participation feature.

In order that there can be no misunderstanding as to this unusual feature of participation; let me briefly explain it at this point.

The stock carries a 6% Preferred feature; likewise it also gives to its holders the additional participation feature of up to 50% of the net profits of the corporation.

Exhibit S. 6. Radio Talks.

Commencing January 1st, 1929, these shares will be on a 12% dividend basis. As the profits of the Industrial Loan Corporation increase, this dividend will also be increased.

What is more, hereafter any issues this Industrial Loan Corporation will bring out will not include the 50% Participation Feature, but rather, will be limited to an ordinary Preferred Rate.

Applications at the $16.00 price that became effective December 12th, 1928 are already being received. We would suggest, that in view of the fact that the final allotment at the $16.00 price bearing the 50% Participating feature just referred to, is of a limited number of shares, that it is advisable for you to write us for additional information immediately.

These shares may be purchased on a convenient payment plan.

For full details write:

FINANCIAL INVESTMENT CORPORATION,
605 Broad street,
Newark, New Jersey,

or telephone Mulberry 1313, between the hours of 9 and 12 tomorrow.

EXHIBIT S. 7.

Transcript of statement of Alexander Gordon Edwards, taken at Prosecutor's Office December 27, 1928.

Statement of ALEXANDER GORDON EDWARDS, taken at the Prosecutor's office on Thursday, December 27, 1928.

By Mr. Conlon.

Q You have no objection to making a voluntary statement, have you? A Absolutely not.

Q Where do you live? A Roselle.

Q What is your address? A 280 Third avenue.

Q Are you married? A Yes, sir.

Q Have you a family? A Yes, sir.

Q They live there with you? A Yes, sir.

Q How long have you lived there? A About eight or nine years, if not longer.

Q How long have you been connected with the Financial Investment Corporation? A Since its inception.

Q When? A Since June.

Q This year? A Yes, I think it was the time that the Universal Finance Company changed its name from Public Service Finance Company; I wouldn't swear June, but about that time.

Q What were you doing before that? A In the real estate business and also engaged with the Plaza Loan Society to sell their stock and the Public Service Finance Company which was later the Universal Finance Company.

Q When did you connect yourself with the Plaza Loan Society? A Last November, a year ago, not last month, a year ago last month.

Q Their office was where? A Jersey City.

Q Under what corporation were you working there? A My own name.

Q You sold the stock of the Plaza Loan Company? A Yes, sir.

Q How much stock did you sell? A I should judge $150,000, maybe more.

Q You sold the entire issue? A Only one amount to tell, I don't know what they are capitalized for, I forget.

Q When did you finish that sale? A After I had sold the Public Service Finance Company we went back again and did the Plaza Loan Society.

Q How much did you sell of the Public Service Finance Corporation? A That entire issue has been sold now.

Q How much does that amount to? A 25,000 shares was the original lump capitalization.

Q Did the Public Service Finance office have anything to do with the Universal Finance Company's business? A Yes, the Public Service simply changed its name at the request of the Public Service Corporation who served cases, and Judge Speer of the Public Service Corporation suggested the name Universal Finance Company. May I make a statement before we go further?

Q Yes. A I want to tell you how I got mixed up in the loan securities. I am in the real estate business and have been and still am, and I have been in business for years in Roselle and one of my partners is a fellow by the name of Ferguson who originally lived in Bayonne and at that time, I didn't know him when he was in the security business and he was, and a year ago last November Mr. Wall of the Plaza Loan Society knew Ferguson, he was living in Bayonne as a security salesman and located him in Roselle, so Ferguson mentioned it to me and in the winter the real estate business is quiet and we thought we would make a little extra money and we went over to look over the proposition and it looked good to us and they showed us a statement from the Banking Department where the business was under its supervision

and I didn't know the personnel at all, but seeing this statement and knowing the business was periodically examined by the Department of Banking led me to believe that it must be absolutely safe or the conservative business, so we undertook the issue and that is how I got into this surety business.

Q When you say we, whom do you mean? A Ferguson and myself.

Q That was the Plaza Loan Society? A Yes, sir.

Q You sold the entire issue? A Yes, sir.

Q Did you have anything to do with the conduct of the Plaza Loan Society? A No.

Q Who was running that? A Mr. Maurice Wall, Mr. Irving Meyers and a chap by the name of Mannie Wall, who is Maurice Wall's brother, and a man by the name of Sturgis from Bayonne.

Q When did you finish that work up? A After we had sold the Public Service Finance Company.

Q In other words, you were selling the Plaza Loan Society and the Public Service Finance Company at the same time? A Yes, sir.

Q How did you come to be connected with the Public Service Finance Company? A When I was selling the Plaza Loan Society I saw that it was a lucrative business and I saw other small loan companies throughout Newark and Jersey City, they are generally upstairs in some office building and it appeared to me that with proper management and to bring the business out in the open, that it was a wonderful opportunity to conduct it as a business should be run, so I got in touch with Mr. Hollenbaugh, who I had engaged on the Plaza Loan Society deal, and he was an expert radio man with a view of organizing the company.

Q What was Hollenbaugh's name? A Dale Davis Hollenbaugh. On the radio he had been going three or four years under the name of Dale Davis. He gets programs together, and so forth.

Q What was your suggestion to him? A I explained about the business and told him to look into it and see if it was satisfactory to him and he felt the same about it, as I did, and if so to organize the company.

Q As the result of that you organized the Public Service Finance Company? A Yes, sir.

Q Who was in the Public Service Finance Company? A After Mr. Hollenbaugh agreed to join me we next went to Mr. Mercereau. Mr. Hollenbaugh knew that he had been credit manager for L. Bamberger & Company eight years or more and resigned his position as credit manager to accept one with Kresge as credit manager for more money, and we approached him to become identified with the company, but his position would not allow him to at the time and he suggested Mr. Frank Tappin, who had been credit manager for Mullen & Sons and so we got Mr. Tappin in touch with us, and he said he knew about the business as he was also a director in the Newark Credit Men's Association. He joined us and then we took the matter up with Mr. Evans and he knew the small loan business, and decided to join us.

Q Did you know Mr. Evans before that? A No, I had seen him, but I don't believe I knew him. When I first undertook the Plaza Loan Society I took one of their men over to the Attorney General's office to have them look over it to know that I was all right before I undertook to sell the stock and I saw Mr. Evans at that time, and I haven't seen him from that time until we organized the Public Service Finance Company.

Q Was it your idea to get Mr. Evans into the Public Service Finance Company? A I don't just recollect.

Q Do you know whether the other men did or not? A No, they did not.

Q When did you form the Public Service Finance Company? A If my memory serves me right it was March.

Q Of this year? A In March after the officers had come in we wanted to make it the best in the east so our

first step was to make it fool proof and we didn't employ any unknown quantities but we got McCarter & English to represent us legally and Hasken & Sells, well known in the public accounting business as auditors and tried to make it in point of business the best in the east.

Q When did you change the name to the Universal Finance Company? A I don't remember the date, but I think it was prior to the time the original issue was sold.

Q Was that in June? A It must have been June.

Q What did you do, simply change the name or form a new company? A When we received a letter from the Public Service Corporation we went back to Mr. English who incorporated the company and who had acted as our counsel and referred the letter to him. We had a talk with him and he called up Judge Speer of the Public Service Corporation and told Judge Speer that he knew the principles but did not have any intent of trying to capitalize their names, and told him that it was embarrassing enough at the present time to change their name as they were in the midst of their campaign and asked him if he would not wait until the issue would be sold which would only take a short time and Judge Speer representing the Public Service Corporation agreed to wait.

Q Your first issue was 25,000? A Yes, and after that the name was changed.

Q Was the name changed or did you change the name of the company? A No, at that time they changed the name and increased the capitalization to the same extent and they had a program to open a branch office.

Q How much common stock did you issue? A 5,000 shares.

Q With any par value? A No par.

Q How many shares did Tappin get, do you remember? A 333 or 334, I think.

Q Did he pay anything for them? A I paid for them.

Q Did Tappin pay anything for these shares? A No, I did for Tappin.

Q How much did you pay? A 25 cents a share.

Q How did Tappin secure you for that payment? A Why did I pay for them?

Q Yes. A Because my family had control and I thought it was the only fair thing to do.

Q All the common stock was paid for at 25 cents a share? A Yes, sir.

Q Why did you pay for Tappin's share? A Because when we voted to organize the company we had control of it and I thought it was the only fair thing to do for their stock, inasmuch as they had the minority.

Q How many shares did Evans get? A 333.

Q Did he pay anything for them? A No, I did.

Q You paid for his shares? A I paid for all.

Q What about Fitzmaurice? A The same thing.

Q He had how many? A 333.

Q What about Dale Hollenbaugh? A He had 1333-1334.

Q Hollenbaugh did? A Yes.

Q I thought he only had 500? A Yes, he did have 500.

Q Who paid for them? A I did.

Q What about Belle Edwards? She is your wife? A Mother.

Q She got how many? A 1332 or 1333.

Q L. H. Edwards. A The same.

Q T. P. Edwards is whom? A My brother.

Q 833 for him? A Something like that.

Q You held no shares? A No shares.

Q The total number of shares issued was 5,000? A Yes, sir.

Q How much cash did you put into the company? A $1,250.

Q That was all cash put in? A For common stock.

Q That was all put in by you? A Yes, sir. There was more than that put in. I also paid for some preferred

stock which Mr. Fitzmaurice, Mr. Tappin and Mr. Evans had.

Q How much preferred stock did Tappin have? A He had 35 shares.

Q Issued and paid for? A Yes, sir.

Q At how much? A $10.

Q 35 shares for Tappin? A Yes, sir.

Q 35 shares for Evans? A Yes, sir.

Q And 35 shares for Fitzmaurice? A Yes, sir.

Q Anybody else? A No.

Q That is $1,050 you paid for preferred stock? A Yes, sir.

Q So there was payable on the original investment $2,300? A Yes, sir.

Q That was all put in by you? A Yes, sir.

Q Why didn't you take shares yourself? A Because I didn't think it was good business when I was to take charge of the security end of the business.

Q You mean you took charge of the selling of securities? A Yes, sir.

Q Nothing to do with the Universal Finance Company? A No, I was not an officer or director or anything in that company in an official capacity.

Q (By Judge Forlenza.) Did you have a contract with the Universal Finance Company to sell and that is the reason why you did not want to be a stockholder and have a contract, too? A Yes.

Q (By Mr. Conlon.) Of the 5,000 shares how much does your mother, wife and brother own? A Approximately 52 per cent.

Q How was the Financial Investment Corporation organized? A By Mr. Herman in town, that is just a small corporation, I think only ten shares were issued.

Q Have they a par value? A I couldn't answer that.

Q Who were the incorporators of that? A Mr. Cawthorne, Perry and myself.

Q How were the shares divided? A I have eight shares and they each have one.

Q Did you have a contract with either the Financial Investment Corporation or the Universal Finance Company, you personally? A Prior to that, yes.

Q With whom did you have that contract? A With the Public Service Company and after that name was changed to the Universal Finance Company, then the Financial Investment Company came into the picture.

Q That was originally a contract between you and the Public Service Finance Company? A Yes, sir.

Q Was that contract in writing? A Yes, sir.

Q What was the effect of it? A I was to receive twenty-five per cent. commission and pay all expenses and pay the expenses of the corporation itself up until June 30th.

Q You were to sell the preferred stock of the Universal Finance Company? A Yes, sir.

Q There was no more common stock to be sold? A No common offered to be sold.

Q (By Judge Forlenza.) Did the preferred stock have voting rights? A Yes, if they defaulted in dividends in two years the preferred stock voted.

Q (By Mr. Conlon.) Did the Financial Investment Company have a contract with the Universal Finance Company? A Yes, sir.

Q Was that in writing? A Yes, sir.

Q What was that? A 25 per cent.

Q Practically? A Practically the same.

Q Confirmed by contract with you? A Yes, only to June 30th, then the Universal Finance Company was to pay their own overhead expenses; prior to that time I paid it out of the common.

Q Did the Universal Finance Company pay it? A After June 30th, yes.

Q When did the Public Service Finance Company start to operate? A Last March, I think it was.

Q Who ran that? A Mr. Hollenbaugh, Mr. Evans, Mr. Fitzmaurice and Mr. Tappin.

Q Did you have anything to do with it? A No.

Q How much capital did they start off with? A 25,000 shares.

Q How much cash in the bank? A That I don't remember, I know I put in—

Q You subscribed $2,300? A Yes, I had some stock sold and pledged and I immediately went out and got the check for it.

Q They actually started business with $2,300 in the original investment? A I think there was more than that. I know I had one sale of 300 shares of people I talked to.

Q That was from the preferred stock? A Yes.

Q Then, they had this $2,300 which was your investment? A Yes, sir.

Q The proceeds of the first few sales you made? A Yes, sir, but I also had a going organization to secure more money immediately.

Q Of course, your corporation expenses? A I paid them.

Q Was paid out of this $2,300? A No, I paid the expenses of salary, rent, everything out of my own pocket up until June 30th.

Q What was done to this $2,300? A They bought some furniture for one thing, and I don't remember, you would have to refer to Hasken & Sells, I can't answer that.

Q Didn't they pay the incorporation expenses? A I don't know. I have been so busy myself I can't remember these items but Hasken & Sells can tell you.

Q Then, you proceeded to sell the stock? A Yes, sir.

Q That is the preferred stock? A Yes, sir.

Q What was your method of selling stock? A Over the radio.

Q Over what station did you broadcast? A W.G.C.P., W.A.A.T., W.A.B.C., W.M.A.K.

Q Who did the broadcasting? A Mr. Hollenbaugh and myself, occasionally Mr. Cawthorne, or sometimes he may have the announcer talk.

Q What was the general tenor of the sales talks over the radio? A Well, that we were offering at six per cent. preferred stock participating up to fifty per cent. on a ten per cent. dividend basis and this business is under the supervision of the Banking Department and we called it industrial banking until the last time we were notified by Mr. Hilson that term should be changed.

Q What term did you use then? A Industrial loan.

Q Did you refer to the fact it was bonded? A Yes, the company was licensed by and bonded to and its business supervised by the Banking Department; that's the way it was phrased.

Q What was the amount of the bond you put up? A The company? $5,000.

Q Who went on that bond? A That is the company to the state department.

Q Was that a surety bond? A Yes, sir.

Q When was the first dividend paid? A June 30th.

Q That was a ten per cent. dividend? A On the basis of ten per cent.; two and a half per cent.

Q On the basis of two and a half per cent. annual dividend? A Yes, sir.

Q A quarterly dividend was paid June 1st? A June 30th.

Q Did you have any supervision over the books of the Universal Finance Company? A No, Hasken & Sells. I knew what was going on in a general way, but Hasken & Sells were the accountants.

Q Did you know the status of the financial statement as of the 1st of June? A I did when I saw the statement of Hasken & Sells.

Q What did that statement show? A It showed—I don't know what the capital surplus was, I don't remember, but I do remember that there was a deficit—I wouldn't

call it a deficit, but there was a surplus, but it appeared as though from the statement that the dividends, or a portion of the dividends had been paid from the capital surplus, not the capital. On the same statement Hasken & Sells mentioned that they did not include the accrued interest due on industrial loans; whether they did not include the interest and rights from investments that the company held.

Q What investments did the company hold? A About $180,000 worth.

Q Of what? A National City Bank, New York; Hanover National Bank, Guaranty Trust Company, A. T. T.; Westinghouse Electric; Pullman Company; Sears Roebuck.

Q They were not included in that statement? A No.

Q Why not? A That I couldn't answer, I don't know bookkeeping or anything about accounting and of course we relied on Hasken & Sells.

Q (By Judge Forlenza.) You mean the securities were not reported in the statement? A No, the accrued interest and rights the company owned and neither was the interest on the industrial or small loans, the company's very business was not included in the statement.

Q How were the securities, bonds or stock? A Both, bought through the National City Bank, the world's best authority on securities; they had a representative over talking to Mr. Evans about it.

Q (By Mr. Conlon.) You did not know why the accounts did not include that in the statement? A No, but I know if I was making it up it would be there.

Q You mean three per cent. A Three per cent. a month.

Q The interest then accrued would be for the current month? A No, for the total loan.

Q Isn't that interest paid monthly? A Yes, but sometimes they are in arrears, maybe two or three months.

Q Then, it would be only the interest for the current month plus the interest in arrears? A Yes, in my opinion, knowing the securities the company held there was ample to pay a dividend out of the earnings.

Q Still, the statement showed dividends were paid out of the capital? A A portion, but they made a memoranda on the statement that the accrued interest was not included in it.

Q During that time you were— A I was paying the overhead expenses, so everything was private.

Q During that time you were paying the overhead expenses. A Salaries, yes, up until June 30th, out of the sales company.

Q Up to June 30th you continued your broadcasting campaign? A Yes, sir.

Q And employed the different salesmen who were in here today? A I didn't employ them, I have a sales-manager, Mr. Perry.

Q Glassin, Llewelyn? A Yes, sir.

Q How many salesmen did you have? A I couldn't tell you.

Q About how many? A Twenty, eighteen.

Q In what territory did they cover? A New Jersey, New York, Brooklyn, Long Island, I guess that's all. There may have been an occasional call, but in the main the Metropolitan area.

Q Can you give me the names of these salesmen? A Some, not all.

Q Give me as many as you can. A I cannot give you the full name.

Q Give me as many as you can. A Llewellyn, Pidge, Estabrooke, Anglin, Roat, Chadwick, Page, that's all I can think of now.

Q They were paid how much? A $1.25 a share, when the radio price was continued, prior to that they received ten per cent.

Q $1.40 they received originally? A $1.40 and $15.00, $1.50, but then the radio advanced rates and we had to take care of the expense, and reduced the commissions to $1.25 a share.

Q The Financial Investment Corporation paid twenty-five per cent. of the stock? A Yes, sir.

Q That stock was sold on the installment plan? A Yes, sir.

Q The Financial Investment Company paid its share out of the first payment? A After we received the full deposits on the sale.

Q They were paid how much? A One-third.

Q Then, you received your 25 per cent? A Yes, sir.

Q After the 30th of June the Universal Finance Company continued to incur the payment of the overhead? A Yes, sir.

Q They have continued it up to the present time? A Yes, sir.

Q When did they move to their present office? A I think it was July 1st, if I am not mistaken; I wouldn't swear to that.

Q You continued your radio broadcasting? A Yes, sir.

Q Who made the sales talk on the radio from the 30th of June on? A Mr. Hollenbaugh and myself.

Q Did anybody else? A Occasionally there may have been someone, Mr. Cawthorne, or one of the announcers may have filled in.

Q Who wrote up the material? A I wrote it up and Mr. Hollenbaugh.

Q It was all written up so it could be read over the radio? A Yes, sir.

Q Nothing said over the radio was spontaneous? A No, unless something was left out.

Q All addresses over the radio were written? A Yes, sir.

Q When was the next dividend paid after the 30th of June? A September 30th. June 30th and September 30th.

Q Do you know the status of the books of the Universal Finance Company at that time? A No.

Q Did you see this statement? A I have seen it, but I couldn't tell you the figures on it.

Q Do you know whether or not the dividends on that occasion were paid out of the capital? A No, I don't think they were. I think they were paid out of the earnings.

Q What makes you think they were paid out of the earnings? A Because I know that the company was doing a good business.

Q Then, your thought on that subject is based upon the fact that the company was doing a good business and not upon the fact of information you got from the statement? A I haven't a mental picture of the statement, I don't remember, but I know there were some profits, I think Mr. Evans made a nice profit, he sold some securities in addition to their loan business.

Q Do you know as a matter of fact whether or not the dividend paid were paid out of the earnings? A No, I wouldn't swear to it, no.

Q Was there a subsequent dividend paid? A No.

Q That was the last one? A There is one to be paid December 31st.

Q During this time did you attend any meetings of the Universal Finance Company? A Of the directors?

Q Yes. A I think I was at one, but not during the entire meeting.

Q Was your office in the same place with it? A No.

Q Did you personally have anything to do with their business? A No.

Q Do you know how they are getting along or conducting the business? A I knew that things were going along good; they told me that.

Q Just what was told to you? A Yes, sir.

Q You personally did not know it yourself? A I wasn't in the Universal Finance Company more than two hours in three weeks.

Q You were busy on the other business? A Yes, that and my real estate business.

Q You gave your men literature? A Yes, sir.

Q You knew that they were representing that to their prospects? A What was contained in the literature.

Q What you told them and what was contained in the literature? A Yes, sir.

Q Among other things that this Universal Finance Company was under the supervision of the Department of Banking & Insurance? A Yes, sir.

Q Under a bond of the State? A Yes, sir.

Q And that the stock was six per cent. cumulative stock? A Yes, sir.

Q Participating in fifty per cent. of the net earnings? A Yes, sir.

Q And that it was a ten per cent. dividend paying basis? A Yes, sir.

Q You knew that your men were out representing that to the public? A Yes, sir.

Q Did you, as a matter of fact, know whether or not the corporation was on a ten per cent. dividend paying basis? A Surely, they sent out dividend notices.

Q Was that the only source of your information? A They told me so.

Q Who? A Mr. Evans, Mr. Hollenbaugh.

Q Anybody else? A Mr. Fitzmaurice did. He didn't tell me, but it was passed by the directors.

Q Did you at any time subsequent to June 30th see a financial statement? A At this time I saw a statement was as of June 30th and that was either the latter part of July or sometime in August.

Q That was approximately a month after the books were closed? A Yes, sir.

Q How often did they get a statement? A The Financial Investment Corporation?

Q No, the Universal Finance Company. A I think Hasken & Sells were there every month, whether they gave them a statement I do not know.

Q Did you ever see a statement subsequent to the one issued as of June 30th? A Yes, but that is the one I don't remember; I just glanced at it and haven't a mental picture of it.

Q Look at these three pamphlets marked Exhibits 1, 2 and 3. Are those literature you remember seeing? A Yes, sir.

Q Who decided upon the increase in the stock from $14 to $15, and from $15 to $16? A The Universal Finance Company.

Q Did you have anything to say about that? A Well, I was consulted on it.

Q What was the reason for it? A The company was making very good progress and at the rate the dividends it was paying it was worth it.

Q What progress was it making financially? A Well, they now have a branch in New Brunswick for some time.

Q You mean they were making money? A Yes, sir.

Q Do you know how much money they have made? A No, not to the penny, I know they had a very good business in securities.

Q You did not know at the time whether or not they even made enough to pay dividends? A No, but taking the men, such as they were I had implicit confidence and I know they would not misinform me knowingly and they had Hasken & Sells who are very good auditors and an authority on accounting.

Q Did you consult them about the increase in price of the stock? A Evans & Hollenbaugh?

Q No. A And not me.

Q Upon what do you base your opinion that the status of the company warrants the increase in the selling price

of the stock from $14 to $15 and from $15 to $16? A In the first place I know that it is utterly or almost impossible to buy a stock that shows a six per cent. yield or a five per cent. yield. I will go as low as that, and that the future that the company had in store with the progress they were making and with the program they had in mind that it was certainly worth it.

Q What do you mean by the progress of the company? A From what they told me.

Q That is how you know it from what they told you? A Yes.

Q Only from what they told you? A Yes.

Q And they never showed you a financial statement? A I used to see the daily reports, I know that their loan balance was increased by leaps and bounds.

Q Do you know what their overhead was? A No, I couldn't answer that.

Q Do you know approximately what that was? A I think around $19,000 a month.

Q Do you know approximately how much money they had out on small loans? A Approximately.

Q How much? A Over $100,000.

Q Did they have other investments? A Oh, yes.

Q How much did they amount to? A It varies, it fluctuates. I don't believe at any time they had less than $80,000 up to $200,000.

Q Those were good investments? A Gilt edge securities and I have heard Mr. Evans state that last week he made $5,200 and once before he made over $5,000.

Q That was in the purchasing and selling of securities? A Yes, sir.

Q I mean as to income? A They made quite considerable, because out of the list he selected I dare say 75 per cent. of the stock he purchased for the company had declared rights or had stock dividends.

Q So, at the time they had $100,000 out on small loans? A That is now.

Q Did they ever have more than that? A A loan balance?

Q Yes. A No.

Q It has never been over $100,000? A A little over that, but approximately that.

Q During that time they had from $80,000 to $200,000 invested in stocks and bonds? A Yes, sir.

Q You are quite sure, are you, that the only thing you remember distinctly was one issued as of June 30th? A Yes, sir.

Q After that you only saw one thing? A I saw the working sheet last week, but it is not a complete statement and I haven't intelligence enough in figuring to comment, but that statement showed a net profit of $3,600, but that is the working sheet of Hasken & Sells for the month of November.

Q How much preferred stock has been sold? A It would be a guess, but I should judge 45,000 shares.

Q 45,000 shares at an average of what? A $15.

Q That would amount to approximately? A $600,000.

Q Something over $600,000 of preferred stock? A Yes, but of course, that is sold on the payment plan, too.

Q This period of $36,000 covers a period of what? A One month, and this month I dare say it will be $10,000.

Q Did you ever figure out how much a company would have to make in order to continue ten per cent. dividend on the stock? A I have not, no.

Q (By Judge Forlenza.) Is all the preferred stock paid up? A No, sold on the payment plan.

Q How? A Ten and twenty months.

Q (By Mr. Conlon.) The stock is not fully paid for until all the payments were made of course? A No, and they do not receive any dividends, but their account is credited with four per cent. which is payable from the final payment deducted from the final payment.

Q (By Judge Forlenza.) Can you tell how much has been paid in on the preferred stock? A I would say one-third of it as a guess.

Q Were dividends paid also on unpaid shares? A No, they do not receive dividends.

Q Were shareholders told that the company had issued common stock? A Oh, yes, they know that. That is a good many of them do. I know I have talked to some myself when they called up and wanted to know what the 50 per cent. participation meant, and I told them that fifty per cent. went to the common stock and fifty per cent. to the preferred stock.

Q (By Mr. Conlon.) Was any dividend paid on the common stock? A No.

Q Has there been any dividends paid to the stockholders of the Financial Investment Corporation? A No.

Q What do you do, work on a salary? A I own the company.

Q You draw as you go along? A Yes, there are only ten shares issued and no officer or director of the Universal Finance Company has ever drawn anything from the company.

Q (By Judge Forlenza.) What is the depository? A The Broad & Market which is now the National Bank & Trust Company.

Q Those shares of common stock which were issued to members of your family afterwards? A No.

Q They still stand in their names? A Yes, sir.

Sworn and subscribed to before me this 28th day of December, 1928.

EXHIBIT S. 8.

Statement of Walter F. Cawthorne taken at Prosecutor's office December 27, 1928.

Statement of WALTER F. CAWTHORNE, taken at the Prosecutor's office on Thursday, December 27, 1928.

By Mr. Conlon.

Q Where do you live? A 18 Kearny street, Newark, N. J.

Q Are you married? A Yes, sir.

Q Have you a family? A Yes.

Q Do they live there with you? A Yes.

Q How long have you lived there at this address? A Four years, I guess, a little over four years.

Q Your son does not live with you? A No, my son is married.

Q You are connected with the Financial Investment Corporation? A Yes, sir.

Q How long have you been connected with them? A Since they were organized in June or July.

Q What did you do before that? A I was in the banking business.

Q Where? A I was a bank teller in the Union County Trust Company of Elizabeth.

Q Do you know Mr. Edwards? A A. J., yes.

Q How long have you known him? A I guess fifteen or twenty years.

Q Tell us, by the way, you are willing to make a voluntary statement? A I haven't anything to keep back.

Q Tell us how you became connected with the Financial Investment Corporation? A Why, along in February, I think it was February, or March of this year, I went to Jersey City to take care of the situation for Edwards over there, the Plaza Loan Society and while I was over there they organized this company here in Newark.

Q Who organized it? A Edwards, he organized the Financial Investment Corporation and they handled the securities for the original company and when they were finished up in Jersey City he asked me to take charge of this over here, which I did and organized the company and handled the securities for the Universal Finance Company.

Q Did they handle the securities of the Universal Finance Company or the Public Service Finance Company? A The Public Service Finance Company was before my time.

Q When did you join the outfit? A In July, when this company was organized, the latter part of June.

Q (By Mr. Fisch.) Which company? A The Financial Investment Corporation.

Q (By Mr. Conlon.) Was the Universal Financial Company in existence then, do you know? A I think that is about the time they changed the name from the Public Service Finance Company to the Universal Finance Company; it was organized first as the Public Service Finance Company and then the name was changed to the Universal Finance Company some time in June and I came along about the latter part of June, when it was the Universal Finance Company, not the Public Service Finance Company.

Q Are you a stockholder in the Universal Finance Company? A No.

Q Are you a stockholder in the Financial Investment Corporation? A Yes, sir.

Q How many shares do you hold? A One.

Q How many shares were issued? A I guess ten.

Q Did you pay anything for the share you hold? A No.

Q Who gave it to you? A The president of the company, Mr. Edwards.

Q (By Mr. Fisch.) Did any one pay anything into the company? A Edwards financed it, it was his company, and he started it going.

Q How much money did he put into it? A I couldn't tell without looking at the records; not more than a couple thousand dollars and he paid for the incorporation, and so forth.

Q (By Mr. Conlon.) What was your connection with the Financial Investment Corporation? A To act as treasurer, on a commission basis.

Q How was the commission to be paid, on what basis? A It started at 30 cents a share, and it reduced to now it is 25 cents a share.

Q You were to get 30 cents? A 30 cents and now 25 cents.

Q For each share? A Sold.

Q Of the Universal Finance Company that was sold by any of the salesmen? A Yes, over writing.

Q Were you paying expenses out of that or was that left to you? A I would say it was left to me, there was some expense I paid and some the company paid.

Q The Financial Investment Corporation was about to sell the stock of the Universal Finance Company? A Yes, sir.

Q How much was the Financial Investment Company to receive? A 25 per cent.

Q What was your percentage on that 25 cents a share, do you know? A Yes, I don't know, figuring that would be about one per cent.

Q What were your duties there? A Treasurer and handled all the cash for the company, all the sales came to me and I paid over the shares and bought them from the Universal Finance Company.

Q Who employed the salesmen? A Mr. Perry had charge of the salesmen at the time.

Q You hadn't anything to do with them at all? A No, they all came under Mr. Perry.

Q You were the treasurer of what company? A The Financial Investment Corporation.

Q What did you do? A What did I do?

Q Yes. A Why, I handled the funds as they came in and paid the Universal Finance Company.

Q As all sales of stock of the Universal Finance Company came in the proceeds were turned in to you and checks were made out to the Financial Investment Corporation? A Yes, sir.

Q And you deposited them as a bank account under the name of the Financial Investment Corporation? A Yes, sir.

Q You drew your checks how? A On the same account and paid the Universal Finance Company.

Q How much did you pay for? A The full amount, less twenty-five per cent.

Q In other words, as the subscriptions came in from stockholders you paid 25 per cent. over to the Universal Finance Company? A That's right.

Q Did you check out any to Mr. Edwards? A Edwards?

Q Yes. A Oh, he has drawn some, yes.

Q Who signed the check? A I did, I guess I signed them all.

Q You alone? A The account stands in the name of the corporation for the check was signed by either the president or the treasurer.

Q Tell me again when you joined the company? A Somewhere along about the latter part of June or July.

Q Did the Financial Investment Corporation have any expense at that time? A Of the organizing.

Q No overhead? A None that I know of. See, it was worked out this way. They started off at 810 Broad street called the Public Service Finance Company, and whatever expenses were borne there, were borne by Mr. Edwards in the original arrangement he had with the Public Service Finance Company.

Q Under that arrangement he was to pay their expenses to the first of July? A Yes, sir.

Q After the first of July the Financial Investment Company had an office of its own? A Yes, sir.

Q Did they have any overhead outside of rent? A No, rent like office expense, that's all.

Q How did you pay your salesmen? A What rates we paid them?

Q Yes. A We started to pay them ten per cent. and reduced it to $1.25 a share which would be eight and a fraction.

Q How many salesmen did you employ? A At times as many as twenty.

Q Can you give me the names of any of them? A Yes, Pidge, Angle, Roat, Glassin.

Q Can you tell me any who are not here today? A Well, really, I don't know how many you have here today.

Q Mention some more. A Estabrook, Llewellyn. One man who is now in Florida on a trip, Talmadge.

Q What is his first name? A Harvey.

Q Where does he live? A Jamaica, Long Island. Chadwick.

Q What is Chadwick's first name? A I don't remember.

Q Do you know where he lives? A He lives in Elizabeth, I think.

Q Did you have any contract with the salesmen? A Very little, only in paying their disbursements and funds and their commission when it was due I paid that.

Q Did you have anything to do with the radio broadcasting? A Do you mean of paying?

Q No, in broadcasting, did you prepare any literature used in the broadcasting? A No.

Q Who prepared that? A I think Edwards prepared most of it.

Q Did he go over it with you? A We generally read them together, most of them. Edwards was generally outside and when the talks were made he would go over and put them on.

Exhibit S. 8. Statement of Walter F. Cawthorne.

By Mr. Fisch.

Q Were you offering any industrial loan securities? A Our company?

Q Yes. A Yes.

Q What industrial loan securities were you offering? A Universal Finance Company.

Q You considered that an industrial loan security? A Yes.

By Mr. Conlon.

Q Those were the only securities you offered? A That is the only one, the Universal Finance Company.

Q Were you familiar with the literature of the salesmen, the literature the salesmen used in sending out to prospective customers? A Yes.

Q I show you three pamphlets marked Exhibit 1, 2 and 3, respectively, do you recognize them? A Yes, I think this was the first one we got out (indicating.)

Q Referring to number 2? A And this is the second (indicating.)

Q Did you discuss with any of the salesmen the matter contained in these pamphlets? A I don't know, I don't remember any particular discussion with them.

Q I mean as to the status of the Universal Finance Company and the nature of its business and prospects. A Yes, I talked to them some.

Q Did you have anything to do with the preparation of these pamphlets. Did you consult them? A I probably consulted, but I did not coach them up, probably the whole three of us, Mr. Edwards, Mr. Perry and myself had something to do with it.

Q You were thoroughly familiar with the contents of these pamphlets? A Yes, sir.

Q You knew that the salesmen were going out and representing to the public the contents of these circulars? A Yes, sir.

Exhibit S. 8. Statement of Walter F. Cawthorne.

Q You knew that they were representing that the Universal Finance Company was licensed and bonded to the State of New Jersey? A Yes, sir.

Q And that they were representing that it was under the supervision of the department of banking and insurance? A The business was under the supervision.

Q You knew that they were selling six per cent. preferred stock participating in fifty per cent. of the net earnings? A Yes, sir.

Q You knew that all of the common stock was held by three or four individuals and that none of the common stock was sold? A Yes, sir.

Q You knew that Mr. Edwards paid for all of the common stock of the Universal Finance Company? A No.

Q You did not know that? A No.

Q Do you know how much had been paid in for the common stock of the Universal Finance Company? A No.

Q You knew that the salesmen were representing to the public that the Universal Finance Company was on a ten per cent. dividend paying basis which dividends were being paid quarterly? A Yes, sir.

Q You knew that a dividend was paid on the 30th of June? A Yes, sir.

Q And you knew that a dividend was paid on the 30th of September? A Yes, sir.

Q Two and a half per cent. on each occasion being a quarterly dividend of ten per cent. on a ten per cent. basis? A That's right.

Q You knew that the salesmen were representing to the public that the stock preferred was paying ten per cent. annual dividend, that is six per cent. on the preferred stock and four per cent. out of the— A Participating.

Q And that they were representing that those dividends were paid out of earnings of the company? A Yes, sir.

Exhibit S. 8. Statement of Walter F. Cawthorne.

Q Do you know whether or not those dividends were paid out of the earnings of the company? A I don't know anything about the details of the Universal Finance Company, only a report came from Hasken & Sells and I believe them to be competent and reliable and when they said out of the earnings, I never questioned it, as a matter of fact I believed it did.

Q What statement did you see from your account? A Hasken & Sells?

Q Yes. A I never went over the statement carefully.

Q How often did they get out a financial statement? A They never got one out for publication, they got it out for their own office.

Q You mean for publication to the public? A Yes.

Q But how often did the accountant get out a statement for the use of the Universal Finance Company? A I suppose they got them out often.

Q Do you know? A No.

Q Did you inquire? A I asked two or three times about it and they said that it would be out soon, but I never saw one.

Q Did you make any effort to see one? A Not particularly, no.

Q You did see some pencil statements? A The last statement I saw was within the last week or ten days, or two weeks I saw the pencil trial balance of the company which was being sent to Trenton.

Q You say the salesmen would represent to the public that the dividends were being paid out of the earnings? A Yes, sir.

Q You knew that? A I believe they were, yes.

Q You are collecting your commission on the basis of those representations? A Yes, sir.

Q But you never made any effort to find out whether or not that was true? A Only from asking, that was all, of course, I asked both the president and the treasurer.

Q Who is the president? A Mr. Hollenbaugh.

New Jersey State Library

Q Who is the treasurer? A Mr. Evans.

Q Your offices were very close together? A One was at Broad and Market and the other was away up at 605 Broad street.

Q That is the extent of the efforts you made to find out whether those representations were true? A I took their word for it and I do believe it is true.

Q What is the basis of your belief? A Because, the same as you hire a lawyer, Hasken & Sells said it is true and I believe it.

Q Where and when? A At no particular time, but they said it many times.

Q Who of Hasken & Sells said it? A I don't recall the name of the man who was regularly in the office.

Q Do you recall the name of one? A Mr. Johns.

Q What did he say about it when you asked him? A I won't say that he said it to me personally, but it came to us. I don't remember asking Johns personally but the reports came back to our office that the earnings were so much and the dividends would be so much.

Q The report came from who? A To our office.

Q I understood you talked to Hasken & Sells there? A Yes.

Q Who from Hasken & Sells did you ever inquire from? A Not directly, I got it through Mr. Edwards.

Q You did not get it from Hasken & Sells? A From Mr. Edwards.

Q You also told me that you took the word of the officers of the Universal Finance Company for granted? A Yes, sir.

Q Is that the only thing upon which you base your opinion that the dividends were paid out of the profits? A Absolutely.

Q You never went in there however to verify it? A No.

Exhibit S. 8. Statement of Walter F. Cawthorne.

By Mr. Fisch.

Q A little while ago in response to a question which was asked you, you seemed to make some differentiation regarding the supervision of the department of Banking and Insurance. You were asked whether the statement made over the radio to your knowledge that the Universal Finance Company was under the supervision of the Department of Banking and Insurance, and your answer was that the business was supervised by the Department of Banking and Insurance. A Yes, sir.

Q What distinction do you make on that? A I think at the start of our radio talks, we said that it was under the supervision of the Banking Department, and we were corrected in that, and then said that the business was under supervision.

Q Who corrected you? A I don't know who it was.

Q How was it called to your attention? A I don't know whether the Banking Department or someone else called our attention to it.

Q Who was it who broadcast the statement that the Universal Finance Company was under the supervision of the Department of Banking and Insurance? A The business.

Q No. A That was one of the first talks.

Q Yes. A I don't know, Mr. Edwards can probably tell you better because he made up the talks.

Q He made up the talks and went over them with you? A Yes, sir.

Q Whoever delivered them they were delivered at the sanction of the officers of the Financial Investment Corporation? A Yes, sir.

Q The talkers went on saying that the Universal Finance Company, an industrial banking institution that has an established license bonded and its business supervised by the Department of Banking and Insurance of the State of New Jersey? A I knew it was.

Q That was gone over by you? A I knew it was going in the talk, yes, sir.

Q You still think that that statement was a correct statement of the situation? A It is a fact, isn't it?

Q What is that? A I say it is a fact, isn't it? That is the way I interpret it. We are under the supervision of the Banking Department but licensed and bonded to the state.

Q You believe the company is under the supervision of the Department of Banking and Insurance? A Yes, I do.

Q Why? A Because the Banking Department has just been examining the company.

Q Because the Banking Department has been examining the company you say that they are under the supervision of the Banking Department? A They supervise each company.

Q The Banking Department or the investigation? A The Banking Department have been here for the best part of the week examining the books.

Q Then, do you know whether the business is under the supervision of the Department of Banking and Insurance? A Yes.

Q That is why you say the business is under the supervision of the Department of Banking and Insurance? A Yes.

By Mr. Conlon.

Q Do you know a man named Tappan? A I met him. He was a member of the company before I had anything to do with it, he was in the company before me, and then he was secretary quite a while.

Q Why did he get out? A That I don't know.

Q You have no idea why he got out? A No, some internal trouble, what it was I don't know; that was the Universal Finance Company business and I don't know.

Exhibit S. 9. Statement of Charles Perry.

By Judge Forlenza.

Q Did you give any talks over the radio? A Yes, a few at the start.

By Mr. Conlon.

Q In those talks you represented about what this literature contained? A It was just handed to me, the article, to read.

Sworn and subscribed to before me this day of December, 1928.

EXHIBIT S. 9.

Statement of Charles Perry taken at Prosecutor's office December 27, 1928.

Statement of CHARLES PERRY taken at the Prosecutor's office, Newark, New Jersey, on Thursday, December 27, 1928.

By Mr. Conlon.

Q Where do you live? A 3523 Avenue I, Brooklyn, New York.

Q How long have you lived there? A About four years.

Q Are you married? A Yes, sir.

Q Have you a family? A Yes, three.

Q Do you live with your wife and children? A Yes, I do.

Q Have you any objection to making a voluntary statement in this matter? A No.

Q Do you know Mr. Edwards? A Yes, sir.

Q How long have you known him? A Probably about four years.

Exhibit S. 9. Statement of Charles Perry.

Q You are connected with the Financial Investment Corporation? A Yes, I am.

Q When did you join it? A I joined them when they were incorporated in June.

Q Were you connected with Mr. Edwards in business before that? A Yes, I worked with him before that.

Q Where? A On the Plaza Loan Society.

Q When did you join him in that? A In March.

Q I understand you sold the entire Plaza Loan Society issue of $150,000? A All there was to be sold.

Q Then, you came to Newark? A Then we came to Newark, yes, sir.

Q And started the Public Service Finance Company? A No, I did not start the Public Service Finance Company.

Q Who did? A The Public Service Finance Company was started, they were working, the Public Service Finance Company, when we sold the Plaza Loan Society.

By Mr. Fisch.

Q Then, the Public Service Finance Company changed its name to the Universal Finance Company? A Yes.

Q You started the Financial Investment Corporation? A I joined the Financial Investment Corporation.

By Mr. Conlon.

Q When did you join them? A Sometime in June.

Q Are you a stockholder? A Yes, sir.

Q How much stock do you hold? A One share.

Q Who owns the rest? A Cawthorne and Edwards of what is issued.

Q What has Cawthorne? A One share.

Q How much does Edwards hold? A Eight.

Q Do you know how much was paid for these shares? A No.

Q Did you pay anything for your share? A No.

Exhibit S. 9. Statement of Charles Perry.

Q What is your arrangement with the Financial Investment Company? A My arrangement with the Financial Investment Company is that I receive so much money for each share sold.

Q How much do you receive? A Twenty-one cents.

Q What is your office in the corporation? A Secretary.

Q (By Mr. Fisch.) What does Cawthorne receive? A I don't know.

Q You are an officer of the Company? A I think he receives a little more, that is something I never entered into.

Q You are an officer of the corporation. A Well, again I am going to tell you regardless of that that I do not know.

Q What office do you hold? A Secretary.

Q Do you keep the minutes? A Yes.

Q Wasn't there a resolution in regard to that? A There was, but I only knew my own compensation.

Q What was Edwards' compensation? A I don't know.

Q Did you write up the business? A I did, but I didn't write up any minutes; that was fixed by Edwards.

Q That was fixed by Edwards? A Yes, sir.

By Mr. Conlon.

Q This was a one man corporation? A Yes, sir.

Q Edwards was the sole owner? A Yes, sir.

Q The money was expended as he directed, is that correct? A Yes, sir.

Q When did you first learn of the Universal Finance Corporation or the Public Service Finance Corporation? A In March, I believe.

Q Were you instrumental in selling the securities of the Public Service Finance Company? A I went there as a salesman and worked a few days as a salesman, probably two or three days.

Q You brought another salesman with you, didn't you? A Yes, sir.

Q Who is he? A Captain T. J. Lassen.

Q He is still with them? A Yes, he is still with us, yes, sir.

Q The Public Service Finance Company was reorganized in June, wasn't it? A I believe so.

Q Under a new name? A Yes, sir.

Q Do you know who the stockholders were? A No, I do not.

Q Do you know how much money was paid in? A No, sir.

Q Do you know how much money Mr. Edwards put in? A No, sir.

Q Do you know how much the others put in? A No.

Q Do you know whether they put in anything? A I do not.

Q You did not inquire? A I did not.

Q What were your duties insofar as selling the securities of the Universal Finance Company? A I handled all the men as sales director.

Q You were secretary and sales director? A Yes, sir.

Q You hired the men? A I did.

Q Arranged the terms of their payment? A Yes, sir.

Q They were paid so much a share? A So much a share.

Q Originally ten per cent? A Originally ten per cent. and cut to eight and one-third.

Q Who prepared the radio broadcasting addresses? A Mr. Edwards.

Q Did you help him? A No, sir.

Q Did you edit them? A No.

Q Did he ever show them to you before broadcasting them? A At times he would read them.

Q You listened to them over the radio? A Yes, sir.

Exhibit S. 9. Statement of Charles Perry.

Q You were familiar at all times with what was being broadcast? A Yes, sir.

Q Who gave the salesmen all selling points? A I did.

Q You had literature? A Yes, sir.

Q Do you recognize these three pamphlets? A I do.

Q Those three sheets I show you are marked one, two and three, they are the literature you used in connection with the selling? A Yes, sir.

Q And which was mailed out to your prospects? A Yes, sir.

Q And also given to your salesmen? A Yes, sir.

By Mr. Fisch.

Q Who made up the facts in the literature? A I don't know, that was carried along from the old Public Service Finance Company, I don't know that it has been changed any.

Q Who got it up? A I don't know, it was just a heritage, that is, it was in existence before.

By Mr. Conlon.

Q When you hired these men you gave them instructions on how to proceed with the selling? A Yes, sir.

Q You gave them your selling points? A If any were given, I gave it to them.

Q What did you tell them about the sale of stock in the Universal Finance Company? A I told them that it was a small loan corporation, and the interest rate was as permitted by law.

Q Three per cent. a month? A Yes, and what possibly could be earned at that rate. I do not know that there was any fixed stereotyped literature we were to have.

Q Did you tell them that the corporation was licensed by the State of New Jersey? A I don't think so. I never

preached it because it was in the copy; as a rule in hiring a man we would give him a copy.

Q You knew that was in the copy? A Yes, sir.

Q Did you tell them that it was bonded to the State of New Jersey? A In the copy, yes.

Q Did you ever mention that to any of them? A I don't think specifically.

Q Do you know how much bond was put up? A $5,000.

Q Did you tell them that the corporation was supervised by the Department of Banking and Insurance? A No, sir.

Q Did you tell them anything of that sort? A I told them that at times an examiner from the banking department saw and examined the books of the corporation, because I know when I was in the Plaza Loan Society the bank examiner did go over and examine their books.

Q Did you tell them that the business was supervised by the Department of Banking and Insurance of the State of New Jersey? A Not specifically, I may have.

Q The fact was in your literature? A I don't know whether it is.

Q (By Mr. Fisch.) Did you tell them that the Universal Finance Company was engaged in Industrial Banking? A Yes, I think it is on there.

Q Did you see it on there yourself? A I am not saying yes or no, I am not perjuring myself.

Q Tell us if you did. A I may have, I do not want to say no or yes.

Q (By Mr. Conlon.) When they first started to sell the stock, what did they sell it for? A Who are they?

Q The salesmen? A You mean the Universal Finance Company?

Q Yes. A $15.

Q That is the only stock you sold? A That is the only stock during the period I was a salesman a few days

before that Edwards had the Public Service Finance Company.

Q Subsequent to that, do you only know you sold the stock of the Universal Finance Company? A Yes, sir.

Q You started selling that at $15 preferred stock? A Yes, sir.

Q Cumulative? A Yes, sir.

Q Six per cent? A Yes, sir.

Q Participating in fifty per cent. of the net earnings? A Yes, sir.

Q Do you know who held the common stock? A No.

Q Do you know whether any dividends were ever paid on the common stock? A I do not.

Q Did you tell the salesman that the stock was paying dividends at the rate of ten per cent. per annum in quarterly payments? A Yes, sir.

Q Six per cent? A Six per cent. and four per cent.

Q Six per cent. on the preferred stock and four per cent. on the participating? A Yes, sir.

Q You told them that? A Yes, sir.

Q Did you tell them that those dividends were paid out of the earnings of the Company? A Yes, sir.

Q When was the first dividend paid, to your knowledge? A Well, the first dividend paid, I know they paid a dividend in June, because that is just been brought to my attention.

Q That was? A And I do know that a dividend was paid in October.

Q Those were on the basis of ten per cent. annual dividends? A Yes, sir.

Q Do you know whether those dividends were paid out of the earnings? A That was my understanding.

Q Do you know as a matter of fact whether or not they were? A I take it as a fact.

Q Do you know as a matter of fact they were? A Well, now, just a minute, I will have to say I do not know as to that, that is, I have heard that the Hasken & Sells people say that it was paid out of the profits.

Q Hasken & Sells are your accountant? A Yes, sir.

Q Who are their men who said that the dividends were paid out of the earnings in your presence? A Mr. Johns, I believe.

Q Was anyone else present when he said that? A Why, I don't know.

Q What did he say about that? A Well, just that the company earned dividends.

Q When did he tell you that? A I don't remember.

Q Do you remember the month? A It must have been around October, but I don't have any reason to specifically remember it.

Q Did you know anything about the June dividend? A No.

Q Did you know whether or not it was paid, whether there was a dividend paid in June? A Only what I heard.

Q Whom did you hear that from? A I don't know.

Q You were having your salesmen represent that to the public, weren't you? A About the June dividend?

Q About the quarterly dividends. A Only about the quarterly dividends in which I was concerned, sir.

Q What were they? A Only with the first one in October.

Q In other words, you didn't feel yourself concerned with the June dividend? A No.

Q You didn't feel it incumbent upon you to find out whether or not there was a dividend? A I didn't think I had to find out. The word of Haskens & Sells was enough for me.

Q You got word of Haskins & Sells in October. A Even so, it is a guarantee for me enough alone. It is the sterling on silver.

Q You got their word on October? A Yes.

Q Between the end of June and the first of October your salesmen were selling stock, were they? A Yes.

Exhibit S. 9. Statement of Charles Perry.

Q And they were representing under your instructions that it was a ten per cent. that it was paying dividends at the rate of ten per cent? A Yes.

Q And that those dividends were payable out of earnings? A Yes.

Q Did you have any facts in your possession before this statement was made to you in October by Mr. Johns which would justify your statement that they were earning ten per cent. dividends? A I think that at times I glanced over a statement.

Q How many statements have you seen? A I don't know.

Q Have you seen any? A Yes.

Q Did you see the statement of June 30? A No.

Q How often did they give out statements? A I don't know as they gave out any, only that we were going to look after them.

Q How often did they prepare a statement? A I don't know.

Q You don't remember how many you saw? A No.

Q Did you see more than one? A I think only one.

Q When was that? A I would only be guessing to tell you that, sir. I would only be guessing.

By Mr. Fisch.

Q Well, approximately. A Say around October.

By Mr. Conlon.

Q Well, up until the time you saw that statement and up to the time Mr. Johns made this statement to you that they were paying dividends out of earnings, did you have any facts in your possession that would warrant your believing that they were earning the dividends? A No absolute fact, only the certification of the name of Haskins & Sells, sir.

Q You don't mean to say the mere fact that you had Haskins & Sells word would guarantee that you were go-

ing to make ten per cent. profit? A It would guarantee by support that Haskins & Sells wouldn't put themselves to any act that wasn't right. It was a guarantee to me of certified public accountants.

Q But you didn't get that until October. A But even so we had that guarantee before that, sir.

Q You had it guaranteed by Haskins & Sells? A We had it by their reputation behind it. We had their reputation behind it.

By Mr. Fisch.

Q Behind what? A Behind their certification that they would not be any party to anything wrong.

Q But you didn't have any certification from Haskins & Sells until October? A I wasn't concerned until that time, until I started to sell the stock.

Q You started to sell that before October? A Yes, but I didn't start to sell it until after June, latter part of June.

Q You sold from June to October? A Yes.

Q Without any certification from Haskins & Sells? A All right. I had their name on there.

Q You had their names that they were the auditors? A Yes, sir.

Q Because of the fact that you had their names that they were the auditors, that was why you told your salesmen that this dividend was being paid out of earnings, is that right? A Yes.

Q That is before they ever told you about it? A Now, wait a minute there. Yes, that is right. I will say that.

By Mr. Conlon.

Q What did Mr. Johns tell you in October? A Oh, I can't remember the exact date or the exact statement.

Q Well, in effect what did he say? A That the corporation was earning more than enough to pay the dividend which was required or stated.

Q He told you that personally? A Yes.

Q Did he have a statement in his possession at the time? A No.

Q Did you know how much the company had invested in small loans? A No.

Q Did you know how much they had invested in stocks, and bonds? A No. I never bothered about it.

Q Do you know anything about what was done with the assets of the Universal Finance Corporation? A Gentlemen, let me answer this. With the men behind it, and Haskins & Sells taking care of the books, I was perfectly satisfied, perfectly content that everything was 100 per cent. and a 100 per cent. plus. I didn't think that I had to delve in.

Q What do you mean by the men behind it? Who was behind it that you had such explicit confidence in? A Well, Mr. Fitzmaurice.

Q Was he active at all in the conduct of the company? A Why, I don't know. I suppose so.

Q Well, you don't know? A But his name is there, and I suppose that at every board meeting of the directors, he would be there.

Q Who else? A Mr. Evans and Mr. Hollenbaugh.

By Mr. Fisch.

Q Who was Mr. Evans that you had such explicit confidence in him? A Well, just Mr. Evans.

Q The fact that he was just Mr. Evans—did that make you have explicit confidence in him? A Now, here, that is one thing I prefer not to answer, sir.

Q Why? A Well, I don't think I have to state a reason for that.

Q What is that? A I prefer not to state a reason. I had confidence that I had met him—a fine, outstanding character.

Q And it is from your own judgment then? A Yes.

Q Without any investigation of him? A I didn't need any investigation, sir.

Q You said a few minutes ago that from the men behind it you had confidence enough to know that things were 100 per cent. A Say my own judgment, then.

Q In your judgment? A Yes.

Q What did you know about Mr. Hollenbaugh? A Only my associations with Mr. Hollenbaugh. Again, my personal observations.

Q You didn't know of any connections which he had with any other companies? A Only as stated on the copy there.

Q You didn't look them up to investigate them? A No.

Q You knew, did you not, that this Universal Finance Company wasn't engaged in industrial banking? A The first I knew of the industrial banking was over at Plaza Loan, and there was two letters which were used, and in the two letters from a bank the term industrial banking was used. I knew that the Morris Plan, the Modern Loan Company and the Beneficial Loan, and other corporations, used the word industrial banking.

Q So you proceeded to use it in connection with the sale of the stock of the Universal Finance Corporation? A I continued to use it, sir.

Q It had been used by whom? A It had been used by the Public Service.

Q The Public Service Finance Company used it? A Yes.

Q That is why you termed an investment in the Universal Finance Corporation on investment in industrial banking? A I didn't term it as such.

Q What? A That is not my coining of the word, or phrase, "industrial banking."

Q Well, you employed that term, didn't you? A I employed that term on our copy, and in other words, if we employed that term, we describe it, the business conducted by the corporation.

Q You headed some of your literature with the phrase that the industrial banking ranks high as a safe money making investment, is that right? A Yes.

Q And you considered that the Universal Finance Corporation was engaged in industrial banking? A I considered that they were in that—to be described as a small loan business as characterized by the Modern Loan and Beneficial Loan, the Morris Plan, and corporations of like nature; lending money.

Q But you haven't answered my question. A Will you repeat it?

(The last question is read by the stenographer.)

A As industrial banking term is understood and described by the Morris Plan, the Modern Loan Company and Beneficial Loan and so forth.

Q You didn't mention those companies in connection with your literature? A It is a similar business sir, isn't it?

Q You didn't mention those companies in connection with your literature as describing industrial banking, did you? A No.

Q And when you mentioned in your statement, in your literature, that it was stated that losses of all kinds, including those of industrial banking corporations and all others, amounted to less than one per cent. you were taking into consideration industrial banks, were you not? A No, sir.

Q Where did that information come from? A I think that that part you will find that, sir, something similar

to that, in the testimony given by Mr. Watts, is it? An expert from one of the Clarence Hodson Companies. I think that he testified that the losses would be along that line, if I remember rightly.

Q Industrial banking? A He used the word small loan and industrial banking, small loans.

Q Small loans? A Yes.

Q He didn't use the words "industrial banking corporation"? A I don't remember, sir.

Q You didn't get that literature from Mr. Hodson, did you? A I think that we had some of Mr. Hodson's.

Q But you didn't get that information which is contained in this literature about loses from industrial banking? A I don't know. I wasn't a party to making up that copy. I had no part of the make-up. I had no part in the construction.

Q You had part in the distributing? A That I will admit, sir.

Q And you also distributed literature with knowledge of the fact that it contained a comparison with bank stocks and industrial stocks, is that right? A In what ways?

Q With reference to the success of the various companies, and the earnings of them. A May I see the company to which you refer?

Q Certainly. A Is this what you mean, the mining companies?

Q Yes. It is headed different type bank stocks versus industrial stocks. A Oh, yes.

Q Is that right? A Yes.

(The previous question is read by the stenographer as follows: Question: "And you also distributed literature with knowledge of the fact that it contained a comparison between bank stock and industrial stocks, is that right?")

A Yes.

Q What was the purpose of that comparison? A I don't know. That is copy that is carried along just the same, sir, as the other. That is not new copy.

Q I am not concerned with whether it is new copy or not, I want to know what was the purpose of the distribution of that copy. A I don't know any particular purpose, sir, and I wouldn't know any particular purpose unless I put that in the copy.

Q But you saw it? A Now, you don't want me to answer anything in a way as though that I put that in?

Q No, I don't want you to answer anything that is not so. A No.

Q You have said that you had nothing to do with the make-up of the literature, and I am taking your word for what you say, but you had something to do with the distribution of it? A I did.

Q And you knew what the literature contained? A Yes, sir.

Q You read it? A Yes, sir; every bit I did.

Q And you know that it made this comparison between bank stocks and industrial stocks, is that right? A Yes.

Q What was the purpose of distributing literature with that comparison? A It would be my opinion to give that—and I have to guess this now. I want you to believe me when I tell you that. It is just customary; just customary I believe.

Q Now, did you class the stock of the Universal Finance Corporation as an industrial stock? A No.

Q Did you class it as a bank stock? A If I used the word industrial banking or small loan—no, I wouldn't class it as a bank stock. We never used the word bank. We used banking.

Q Why then did you distribute literature with that comparison between bank stocks and industrial stocks? A Doesn't the comparison cover minings?

Q Then the minings were industrial? A Doesn't that cover the gamut, you might say, of all the stocks?

Q Well, does it? Did you say it does? A Wouldn't you say so? You have mining; you have industrial stocks; you have bond issues; you have financial, you have oil and mining companies. You take a wide range there, don't you?

Q Let us see whether we do or not? A You take some range.

Q Let us see. You considered, of course, oil and mining companies, as industrial stocks, didn't you? A No, I consider a mining stock a mine stock.

Q You wouldn't call it a bank stock? A No, I wouldn't call it an industrial stock either.

Q This is a comparison between bank stocks and industrial stocks, isn't it? A Yes.

Q You didn't consider stocks of oil and mining companies as industrial stocks? A In other words, you want me to admit that it is not a bank stock?

Q That it is not a bank stock. Either it is industrial or a bank stock. Look here, old man. I want you to know I am not trying to trap you. A I don't think so. I am trying to answer your questions.

Q Now, then, you don't consider that oil and mining companies are bank stocks, do you? A No.

Q You would rather consider them industrial stocks? A I would.

Q Then the statement that out of one hundred industrial companies five succeed you certainly refer to industrial stocks there, do you not? A Yes.

Q Out of a hundred bond issues, 97 succeed, you referred there to bank stocks? A Bond issues?

Q Yes. A Well, a bond issue might cover anything.

Q You didn't refer to bank stocks? A I am not referring to anything here, sir.

Q When you compare the average yearly return of all successful oil and mining companies or as being nine per cent. of industrial companies eight per cent. of bond issues of five per cent. and of financial institutions twenty-

five per cent, did that "financial institutions" go under the category of the distinction between bank stocks and industrial stocks at the head of the column? A The bank stocks—they referred to bank stocks.

Q Won't you answer my question? A Yes. Ask it again.

(The last question is read by the stenographer.)

A Yes.

Q Did you consider the Universal Finance Corporation stock as a bank stock in that sense? A I would consider anything trading with money. When we speak of one tenth of one per cent. of losses, we have to consider it along banking lines, with money.

Q Did you consider that stock as a bank stock? A Did I consider it a bank stock?

Q Yes. A No.

Q You didn't consider it a bank stock? A No, not a bank stock.

Q In spite of the comparison? A No, I didn't consider it a bank stock.

Q Did you consider it an industrial stock? A No.

Q Did you ever borrow any money from the Universal Finance Company? A Did I?

Q Yes. A Personally?

Q Yes. A No.

Q Have you any stock in the Universal Finance Corporation? A No.

Q You never subscribed for any? A I didn't put it through. I intended to but I didn't do it.

Q Did you not give them a subscription? A I didn't do it.

Q You never went beyond the point of your intention in your own mind? A No.

Q You never put any money into the company at all? A No.

Q As far as the officers of the Universal Finance Corporation are concerned, did you ever attend any of them? A No.

Q You never examined their books? A No.

Q Were you present at any of the broadcast except as a listener over the radio? A Yes.

Q Who broadcast? A I was present when Mr. Hollenbaugh broadcasted, and I was also present when our Mr. Edwards broadcasted.

Q Did they make the statements in those broadcasts at which you were present that this company was under the supervision of the Department of Banking and Insurance? A Not the company under the supervision of the Department of Banking; the business.

Q That the business was under the supervision of the Department of Banking and Insurance? A Yes.

Q Did they also make the statement that they were engaged in industrial banking? A Yes.

Q Now, is there anything that you want to tell me that I haven't inquired about? A I don't know of anything, sir, except that I believed in the Universal, I believe in it yet; that in selling the stock everything that I had in me I put in, put in eighteen, twenty hours a day, and had every confidence in it, and my confidence isn't shattered yet, sir.

Q Did you go out and solicit prospects? A No. You mean for the Universal?

Q Yes. A No. I didn't have the time.

Q Did you hand out the cards? A I hand out the cards, yes.

Q Have you some of those cards with you? A No.

Q Have you a book like this with you? A No, I never had one. I gave them out to the men.

Q You gave them out to the men? A Yes.

Q Who was the man who solicited the local people around here? A We had a number of men.

Exhibit S. 9. Statement of Charles Perry.

Q Were there some of them that solicited the local people? To whom you gave the local leads? A We have Mr. Foster; or we might give them to anybody.

Q You didn't give Anglin local leads? A I have given him some local leads; indeed I have. I don't know how many. I may have given him one or two. Anglin had a car and always wanted to be going.

Q He was in Connecticut most of the time. A He was in Connecticut most of the time. He was out in Connecticut. He wanted to go there.

Q Who were the people who got the local leads? A I had a man by the name of Foster.

Q Is he still with the company? A He was in this morning.

Q What is his address? A Riviera Hotel.

Q What is his first name? A I believe it is R. L. I just had him a short time; just figured him a light man and put him on.

Q Who were some of the other men who had local leads; anything in Essex County say? A Green.

Q What is his first name? A I think it is M.

Q Where does he live? A He lives in Newark.

Q Where? A I don't know his address.

Q What is his first name? A I don't know. Just M.

Q How long had he been with the company? A About two months.

Q Who else? A Oh, I don't remember offhand, sir. I have had so many of them coming and going.

Q You only keep them a short time, do you? A Well, no, I don't keep them for a short time, but some I keep for a short time if they didn't live up to a certain standard.

Q Can you give us the names of some of the other men? A I would much prefer if you let me look at my records on that.

Q Can you recall offhand without looking up your records? A No, I can't. I may have given Estabrook a

lead. I may have given Llewellyn them. I may have given them to Pidge.

Q Pidge handled Brooklyn? A To a great extent, but if it was stormy—in fact, our Jersey leads were so decidedly in the minority. We got very few out of this state, only lately did we get any that you would call any great number of leads in this state.

Q In the State of New Jersey? A In the State of New Jersey.

Q In other words, your radio talks seemed to attract most of the people from distant points. A If you will call New York and Brooklyn and Connecticut—

Q Well, outside of the State of New Jersey? A Outside of the State of New Jersey, yes.

By Mr. Conlon.

Q You don't know anything about the business of the Universal Finance Corporation, do you? A No.

Q Do you know where they bank? A Oh, yes, I know where they did bank.

Q Where? A They did bank over the Broad and Market; the New Jersey Trust Company; I did know that.

Q Do you know where they kept their securities? A No.

Q Who was the man in control of the Universal Finance Corporation? A Now, just explain that a little more, because I am speaking about other men now; not myself.

Q Who was the manager? Who was the one in chief control of the business? A Oh, directing the policy?

Q Yes. A Oh, I think Evans.

By Mr. Fisch.

Q Evans? A I think so. Listen here, gentlemen. I am speaking about other men now. I said I think they are. You don't want me to say anything about them unless I absolutely know it to be true.

Exhibit S. 9. Statement of Charles Perry.

Q You considered that Evans was the big mogul in that company, is that right? A That was my thought. That is my thought.

By Mr. Conlon

Q What about Dale Davis? A No. Make that Dale Hollenbaugh.

By Mr. Fisch.

Q That was his name? A Mighty fine fellow, too.

Q That was his name? A Yes, that was his name.

Q He broadcasted under the name of Dale Davis? A I was going to say that. I took up that question of broadcasting, you know. I understood he used his name for three years of Davis. I never thought of it.

Sworn and subscribed to before me this 28th day of December, 1928.

Exhibit S. 10.

EXHIBIT S. 10

Letter to Dale D. Hollenbaugh from D. T. Evans dated March 29, 1928.

EDWARD L. KATZENBACH
Attorney General

RICHARD C. PLUMER
Special Assistant
Attorney General

STATE OF NEW JERSEY.
DEPARTMENT OF THE ATTORNEY GENERAL
DIVISION OF SECURITIES
24 COMMERCE STREET
Newark, N. J.

March 29th, 1928.

Mr. Dale D. Hollenbaugh,
Newark, N. J.

Dear Mr. Hollenbaugh:

Incident to our conversation regarding the contemplated application for broadcasting over Station WABC of a series of investment educational talks by the Public Service Finance Corporation.

As you know, you submitted to this office copies of the matter used by the Plaza Loan Society over Station WGCP which was entirely satisfactory and we request that the same procedure be followed in this matter.

In view of our past connections along these lines and my personal knowledge of the activities of the Public Service Finance Corporation we feel that your plans will meet with the approval of this office.

Very truly yours,

D. T. Evans,
Examiner.

DTE: H

Exhibit S. 11.

(Stamped)

Banking Insurance
Investigation.

EXHIBIT 271

N. W. BINDSEIL,
Reporter.

File

Public Service Finance Corp.

EXHIBIT S. 11.

Letter to Station WABC from D. T. Evans, dated May 25, 1928.

EDWARD L. KATZENBACH
Attorney General

RICHARD C. PLUMER
Special Assistant
Attorney General

STATE OF NEW JERSEY
DEPARTMENT OF THE ATTORNEY GENERAL
DIVISION OF SECURITIES
24 COMMERCE STREET
Newark, N. J.

May 25, 1928.

Station W.A.B.C.,
Steinway Hall,
West 57th street,
New York City.

Att. Mr. Clark

Dear Sir:

Answering your recent inquiry in reference to the Plaza Loan Society of Jersey City, New Jersey.

The subject concern has satisfactorily complied with the requirements of this office under the operation of the New

Exhibit S. 11.

Jersey Securities Act and this office has no complaints on file regarding this corporation.

Yours truly,

D. T. Evans,
Examiner of Securities.

DTE: K

(Stamped)
Banking Insurance
Investigation.

EXHIBIT 272.

N. W. Bindseil,
Reporter.

Exhibit S. 12.

EXHIBIT S. 12.

Duplicate subscription contract of Joseph F. Armour, dated July 20, 1928.

(Same as Exhibit D. 31 for Identification)

SUBSCRIPTION CONTRACT

No. Shares.....

Duplicate

Phone Mulberry 1313-1314

FINANCIAL INVESTMENT CORPORATION
605 BROAD STREET, NEWARK, N. J.

Gentlemen:

You are hereby authorized to purchase for me *10* shares of the Preferred Stock of the UNIVERSAL FINANCE CORP., a New Jersey Corporation, at Fifteen Dollars ($15.00) per share.

I understand that the par value of such stock is Ten Dollars ($10.00) per share; that it is entitled to a preferred cumulative dividend at the rate of 6% per share per year (from date of issue) before any dividend on common stcok; and that after payment of said dividend at the rate of 6% per share for each fiscal year to the holders of Preferred Stock any further amount declared in dividends for said year shall be divided among the holders of Preferred and Common Stock, share and share alike; that this stock is non-voting except in the event the preferred dividend thereon is not paid for two years, and except as otherwise provided by law.

I, the undersigned, hereby subscribe for *10* shares of the Preferred Stock of the UNIVERSAL FINANCE CORP., a New Jersey Corporation, at Fifteen Dollars ($15.00) per share payable Five Dollars ($5.00) on each and every share upon the signing of this agreement and subsequent thereto the sum of *5.00* monthly at the office of the UNIVERSAL FINANCE CORP., beginning.....10, 19...., without notice until the total sum of Dollars ($*150*) has been paid, and upon my failure to make installment payments for a period of three or more months after last payment I agree to a complete cancellation of this contract and the costs to liquidate same and the corporation shall not be obligated to issue any shares other than for the monthly payments paid in.

No statements or representations that are not contained in this agreement shall be binding upon the subscriber or the CORPORATION.

This agreement shall be made in duplicate and a copy left with the subscriber.

50.00 to be paid on or about July 28th, 1928.

Received $*100*. Full / First } Payment.

FINANCIAL INVESTMENT CORPORATION
By *W. F. Cawthorne*
Representative.

This reservation made July 20th 1928 W. F. C.
Date *July 20th 1928*
Signature *Joseph F. Armour,*
Address *#8 Rau Court*
City and State *Hamilton Beach L. I.*

Make checks payable to Financial Investment Corporation.

EXHIBIT S. 13.

Pamphlet entitled "The Treasure Chest of Modern Finance" (issue of December, 1928).

(This exhibit is the same as Exhibit S. 5.)

EXHIBIT S. 14.

Three envelopes marked as one exhibit (addressed to John Thomas).

Following is a copy of the outside of the envelopes:

FINANCIAL INVESTMENT CORPORATION 605 BROAD STREET NEWARK, N. J. Mr. John Thomas, 56 Pennington St., Newark, N. J.	Postmarked: Newark Sep 5 2.30 PM 1928 N. J.	Two cent postage stamp
FINANCIAL INVESTMENT CORPORATION 605 BROAD STREET NEWARK, N. J. REGISTERED 52328 RETURN RECEIPT REQUESTED 7898	Postmarked: Newark N. J. SEP 21 1928 REGISTERED	Ten two cent postage stamps
UNIVERSAL FINANCE CORPORATION 789 ~~810~~ BROAD STREET ~~NATIONAL STATE BANK BUILDING~~ NEWARK, N. J. Mr. John Thomas, 56 Pennington St., Newark, N. J.	Postmarked: Newark SEP 27 11 PM 1928 N. J.	

Exhibit S. 15.

EXHIBIT S. 15.

Dividend notice—without date received by Geo. Goetz.

DIVIDEND NOTICE

Just a bit of advance information that came to us after this issue went to press.

We have every reason to believe that the Directors will, at their next meeting, vote to increase the dividend rate, starting January 1st, 1929, to 12% and make it payable monthly, that is, the stockholders will receive a dividend check each month.

This, following our prediction, that the dividend would be increased, proves that our judgment was right and will also prove to those who followed our advice to buy, that they have made a good investment.

Just as soon as this is passed by the Board of Directors, the price will be advanced.

We suggest that you make a reservation at once for additional shares, at $15.00 and we enclose a return envelope for your convenience.

Exhibit S. 16.

EXHIBIT S. 16.

Pamphlet entitled "The Treasure Chest of Modern Finance", (issue of November, 1928).

Treasure chests of fiction
that "dot the barren main",
A hunt for them is really,
a waste of time and brain.
But there IS a treasure chest,
that holds within its frame
A fortune, tho it doesn't bulge
with gems like those of fame.
This great old chest is open,
for all who wish to view
Its treasure, and it's welcomed
by good people such as you.
Four times a year a portion
of its contents, just and due,
Is dispensed to those who own it,
who are people just like you.

The Treasure Chest of Modern Finance

Copyrighted 1928 F. I. C.

Tune in on
W M A K
Buffalo
W A B C
New York
W A A T
Jersey City
W G C P
Newark
Watch your
local papers
for
announcement
of time.

PUBLISHED MONTHLY NOVEMBER 1928

The Home *of a* Growing New Jersey Enterprise

At one of the busiest traffic centers in the United States are located the office of UNIVERSAL FINANCE CORPORATION. In a recent two-hour count the pedestrian traffic was more than 25,000. And 85 out of every 100 are potential customers of Universal Finance Corporation.

Exhibit S. 16.

From the President of Financial Investment Corporation

It is with mixed feelings of pride and regret that I write today—pride in my association, as fiscal agent, with an organization as active and having such a promising future as Universal Finance Corporation, and regret that I cannot talk with each one of you personally.

So that you may receive important investment news in more detailed form and regularly—the publication of a "House Organ" begins with this issue. It is called the TREASURE CHEST OF MODERN FINANCE for many reasons, one of which is that it treats of a very important phase of modern finance that in truth may become a treasure chest for its investors. I am confident you will find the items which this and other issues cover not only interesting but helpful. I hope you will benefit greatly from reading them and that news concerning Universal Finance Corporation will be read with the interest a stockholder should have in this growing enterprise.

Right at the very center of Newark's business activities, Universal Finance Corporation is fast developing into one of the most useful institutions in this field of modern finance.

If I could talk with each one of you personally I am sure you would agree with me that this organization offers to investors with moderate resources one of the finest opportunities in existence for safety with high yield.

This modern form of finance is indeed a "Treasure Chest" for both lender and borrower—it solves one of the most urgent needs of our complex life today for those who would borrow, and at the same time offers to the lender a "just and due" return on invested capital. It is nearer to the ideal of high yield with safety than any other form of investment known to me.

If you will follow the sound advice of most bankers, "investigate before you invest", I am sure you will want to assist in making Universal Finance Corporation of greater service to the public at large by becoming actively interested as a stockholder.

P. F. EDWARDS.

Exhibit S. 16.

THE TREASURE CHEST of MODERN FINANCE

Exponent of Safety in Profitable Investments

Devoted to the Financial Interests of
Holders of Securities offered by

FINANCIAL INVESTMENT
CORPORATION
605 Broad Street
Newark, N. J.

Published Monthly by
Specialists in
INDUSTRIAL BANKING ISSUES

Editor
L. W. VAN DENBURGH

This is YOUR Publication —And Here's Why

Half the joy of life is in the little things observed on the run. Let us run if we must, but let us keep our hearts young and our eyes open that nothing worth while shall escape us. Every good thing is worth its while if we only grasp it *and its significance.*

A diamond and a piece of charcoal are both forms of carbon—a pearl and a piece of oyster shell are the same in substance—but how widely each differs in value!

As with precious stones so it is with investments. The substance—money—always the same—but what a vast difference in the value of the final product.

The purpose of this little "Treasure Chest" is to bring to your attention the difference between the diamonds and the charcoals, the pearls and the oyster shells of investment. And it is our purpose to so present them that you may "read while you run"—to make it easy to grasp the worthwhile things and understand their significance.

Exhibit S. 16.

If we can help you avoid the pitfalls of unwise investing, this little publication which comes to you monthly will indeed be your little "Treasure Chest". It is our hope that the reading of this publication may add something to your knowledge concerning the principles of sound investment, and above all, that it may prove a helpful source of guidance in building a safe, steady income.

Investors' Protective Column

This column is reserved for information which will help you in first, avoiding unsafe channels of stock investment and, secondly, make better use of those which are safe and legitimate.

Tipster Sheets

By D. T. Evans,
D. T. Evans & Co., Investment Counsel.

The most serious menace confronting the investing public today is the enormous influx of tipster sheets, fraudulent market letters and supposedly independent and unbiased investment advisory services.

The bull markets of the past several years appear to have become the graveyard of the well known "bucket shops", but fertile pasture for the modern tipster sheet and questionable promoter. The bucket shop could not withstand steadily rising prices, which are of great aid to the tipster.

Despite activities of Federal and state governments and various civic and business organizations to suppress news publications issued to induce buying of spurious or worthless stock, and to halt the work of professional tipsters interested in promoting securities of little or no value, many of them have persisted in business.

Some are behind the bars or are so closely watched as to preclude resumption of their nefarious activities, but others, finding legitimate avenues of public approach through the mails or the press closed to them, have substituted the telephone and telegraph for the typewriter and give over the wires the "hot tips" once a feature of their "market news sheets."

Exhibit S. 16.

The "editorial room" thus becomes a "boiler room" equipped with a battery of telephones manned by high-pressure salesmen to wheedle investments from the unsophisticated and unwary. It has been estimated that thousands of dollars have been spent weekly by many of these companies, so numerous the calls and because of the great distances called, often Texas and the Pacific Coast, from Boston and New York, in their efforts to obtain the "sucker or mooch", in stock parlance, before the opportunity is lost. Sucker-lists are obtained in devious ways and not even experienced investors and financiers are overlooked.

Investigations which frequently end in suppression and punishment of the offenders rarely produce remuneration for investors, and almost invariably disclose similar characteristics in the operations of these doubtful promoters. These tipster sheets mix reliable but ancient observations with specific recommendations for the purchase of securities which, if not spurious, are highly speculative, unlisted and unsound offerings of obscure, and not always going, concerns. The promoters usually have purchased a large block or have a call at a low price and depend upon high-pressure salesmen and public gullibility to create a promising future and a ready and active market.

The promoters, controlling the market, make "wash" or fictitious sales at rising prices. They invent "favorable developments" for disclosure to prospective purchasers over the telephone and in the tipster sheets. Sales by telephone and telegraph and by mail often prevent the making of any contract and consequently delivery of the stock is left entirely to chance. Indeed, the promoter has little interest in deliveries. In many instances, the organization provides few or no facilities for this important phase of the work of legitimate security dealers. His interest ends with the sale and collection of the cash.

A favorite method of the tipster is to offer a trial subscription to his service for thirty or sixty days for one dollar; and then the tipster starts his barrage of telephone calls and telegrams urging immediate purchase of his pet offering by the subscribers to the so-called investment service.

Exhibit S. 16.

The Amateur Investor

Interesting and worth while is the financial history of a married school teacher who began his professional career on a $200 yearly salary which grew during 27 years of service to $4,200 yearly, and who by systematic investing accumulated a sizeable estate and an independent income.

Among things that he has discovered are these general investment precepts: First, to disdain securities in a new venture; success, earnings, background, assets, must ripen them. His investments must have the approval of reliable and competent financial counsel; careful selection of brokers; diversification; borrowed money; securities lodged with banks as collateral; continued holdings, ignoring advances. Speculation, buying on margin, pyramiding, are not to be countenanced. High-yield securities should be paramount, with purchase of a much larger block of investments than there is money available for at the time, through the medium of a bank loan or the partial payment plan. Promptitude in reducing principal sums of notes issued; stampeding into new purchases never permitted; investing to the utmost of capacity with no larger bank balance carried than required, nor large amount of cash idling in personal possession. Punctiliousness in money matters with promises kept rigidly; paying interest when due and never overdrawing.

For the purpose of recording, uniform ledgers should contain strict and accurate accounts; an investment book, with sub-divisions for securities of different characteristics; an income book for recording of dividends; a leather loose-leaf securities record book, a library card file; dummies marking those certificates reposing in bankers' vaults.

Manifold, intricate and perplexing often are the problems of investment. But intricate mazes of psychological contemplation are discarded for simple fundamentals to bring success to this self-styled investing amateur.

Exhibit S. 16.

(PICTURE)

D. D. HOLLENBAUGH
President
Universal Finance Corporation

A Personal Message from President Hollenbaugh

It is said there is no longer romance in business, but I want to say that this statement could not have issued from anyone knowing the "Small Loan" business.

While the rise of this branch of personal financing to its present importance is one of the romances of modern finance, the quick success attained by our company has been nothing if not dramatic.

In the every-day transactions of a business such as ours, which intimately touches the lives of so many people, there can also be found romance and drama on every hand. It is a business that not only concerns the immediate needs of the individual but considers the welfare of the community as well. For this reason, Universal Finance Corporation fills a real need and its success is measured in the way it meets this need.

Our location at Broad and Market Streets, Newark, N. J., brings our name before countless thousands every day and enlarges the field for our services—so much so that we shall soon be compelled to provide increased capitalization for greater expansion.

We have already started our program of expansion by opening a new office. This new office, located in New Brunswick, N. J., promises well for the future by the prompt acceptance of its services in this busy community. Other offices will be opened as fast as capital, ample enough for their successful operation, can be secured.

There can be but one meaning drawn from our success thus far—that people appreciate the work we are doing and are telling their friends about it.

Exhibit S. 16.

Every dollar secured from the sale of our Preferred Stock is immediately placed in service at full earning power for our stockholders. We anticipate a great increase in our business for November and ask our friends to cooperate by sending to our fiscal agents, Financial Investment Corporation, the names of possible investors. Our progress and profits parallel increases in our lendable resources.

D. D. HOLLENBAUGH,
President,
Universal Finance Corporation.

Special Notice

It is with a great deal of pleasure that we announce the association with us of M. B. Shepard Company, Investment Bankers, in the sale of Universal Finance Corporation Preferred Stock.

M. B. Shepard Company will serve those of our friends located in or near Buffalo. Their address is 448-450 Ellicott Square, where they will be glad to greet those who live in this part of New York State.

Quarterly Dividend Declared on Preferred Stock of Universal Finance Corporation

On September 21, 1928, the Board of Directors of the Universal Finance Corporation declared the following Quarterly Dividend:

"Resolved, That the quarterly dividend for the quarter ending September 29, 1928, of one and one half per cent (1½%) together with a participating dividend of one per cent (1%) upon the outstanding Preferred Stock, be and hereby is declared said dividend to be paid on the first day of October, 1928, and to be payable to stockholders who appeared of record at the close of business on September 20th, 1928, and that the treasurer of the corporation be hereby instructed and fully authorized to give due notice of such dividend and to pay the same on the date set forth."

Exhibit S. 16.

BUY NOW

Preferred Stock of Universal Finance Corporation—Participating in the Profits of the Corporation Equally with the Common Stock

If you act promptly you may become a part owner in the rapidly growing business of Universal Finance Corporation. An investment in the preferred shares of this organization differs somewhat from the ordinary investment in Preferred Stock. In this company, the present issue of Preferred Stock is a PARTICIPATING STOCK. It carries a guaranteed annual dividend rate of 6% PLUS a 50% participation in the net profits of the company. In other words, it combines the safety of a stock guaranteed as to dividends and assets and the high earning power of a common stock. Right now it is on a 10% Annual Dividend Basis.

The business of Universal Finance Corporation is stable; it supplies a necessary public service, the demand for which is constantly increasing; its management is conducted by the highest type of executives; its growth has been steady and consistent; its resources are secured against loss by the nature of the business. These conditions contribute to the safety, high yield, and profitable expansion of the business with a consequent security to stockholders and an appreciation in the value of their holdings.

Stock is now offered at $15.00 per share, subject to change without notice. Its par value is $10.00 per share. Its annual dividend rate is high now, but the nature of the business—personal financing—holds promise of an increase as the company expands its operations.

Financial Investment Corporation gladly recommend this stock to you because of its safety and better than average yield, together with the favorable probability of an enhancement in value. Promptness should be observed if you wish to share in this issue of stock at the low price of $15.00 per unit. Stock is being rapidly subscribed and an increase in price is imminent. More complete information will be gladly given at your request.

Exhibit S. 16.

COMMENT ON FINANCIAL INSTITUTIONS OPERATING UNDER THE UNIFORM SMALL LOAN LAW

Federal Reserve Board Bulletin:

"Financial companies supplement our commercial banking system, and supply a distinct economic need in our financial structure."

Certified Public Accountants Bulletin:

"The industrial banks are furnishing the professional man, the small man in business for himself and wage-earner, who have no commercial banking connections, a complete financial service. It cannot be predicted the size the industrial banking system will be in ten years hence."

Hon. William S. Flynn, Governor of Rhode Island:

"There is a need for such a business as this. We all know it. It is a legitimate enterprise. It serves a splendid thing in the community and the man who is in that business gets a certificate of character, so to speak—from the state banking commissioner and shows his readiness and willingness to comply with reasonable regulations. I recognize this as a legitimate upstanding occupation."

Pittsburgh Chamber of Commerce:

"Your committee is satisfied that an agency where individuals, to whom the ordinary sources of credit are closed, can obtain money to help them over temporary financial difficulties, is a necessity in every community."

Boston Chamber of Commerce:

'We certainly consider the law (small loan) a benefit to all persons of moderate means."

Boston Legal Aid Society:

"The uniform small loan law has encouraged reputable concerns organized to do a legitimate business."

Hon. James M. Cox, Ex-Governor of Ohio:

"I make bold to say that the legalized loan business is more of a necessity in an industrial community than, perhaps, a bank for this reason: It is the poor man who, when he needs money, needs it most."

Exhibit S. 16.

Department of Banking and Insurance, Massachusetts:

"This state was one of the earlier to give studious attention to the necessity of controlling the small loan business. The wisdom of that decision has been many times demonstrated. It has brought into the business men of character. The small loan business is recognized as an activity of importance and necessity."

Journal of American Institute of Criminal Law and Criminology, Chicago:

"As long as hosts of men and women are living upon wages or salaries upon the edge of competency the necessity of making small loans will exist. The business should not be placed upon a charity basis. A survey of the character of people who asks for such loans, shows that they are of eminently respectable class, on the whole, proud and normally self-sustaining. They demand the privilege of carrying their own burdens. They are not asking for charity. They pay for what they get. The psychological effect of placing the business on a charity basis is bad and to do so is unfair."

Russell Sage Foundation:

"The striking fact before us is that in the short space of five years the bill (Uniform Small Loan Law) is now a law either in toto or in large part in nearly half the states of the Union and has fulfilled our hopes and expectations.

"The law has reduced unnecessary borrowing and lightened the burden of the deserving borrower. It has saved the borrowing public from the payment of excess interest running into many millions of dollars."

An Ideal Investment—Carrying Attractive Dividends

The Universal Finance Corporation is incorporated under the laws of the State of New Jersey, and is licensed and directly under the supervision of the State Department of Banking and Insurance. This requires a yearly financial statement filed with that department and a periodic examination by the State of New Jersey.

The business of the corporation is similar to that employed by such organizations as the Morris Plan, the Beneficial Loan So-

Exhibit S. 16.

ciety and may well be compared with the large chain stores. It is the purpose of the Universal Finance Corporation to establish branch offices in all of the larger cities of New Jersey and thus to create an earning power that may stand comparison with the largest and oldest of the dividend paying financial institutions of the country. There is no better nor more profitable business than that of dealing in money. The Universal Finance Corporation extends its credit and finances to salaried employees, merchants, manufacturers and professional men and women. Chattel mortgages and secured notes will be back of each loan, ironclad in their collectability. Thus, the Universal Finance Corporation is assured of principal and interest.

Reliable figures show that industrial loan companies operating in New Jersey have realized over thirty per cent gross earnings on the capital invested for years past.

The best way to measure the success of any organization is to study the men in back of the enterprise. In this connection note the character of the business and professional men who manage and control the business.

The Universal Finance Corporation has nothing tied up in permanent commodities. The funds of the corporation are never tied up in permanent investments such as machinery, land, equipment, stock, or buildings. Every single dollar is liquid cash, offering a wide margin of safety. There is no speculative element connected with the work of the corporation.

Tune in On WABC

Designating the period of broadcasting as "The Musical Portfolio", Financial Investment Corporation provides a half hour of enjoyable entertainment every

Monday—Wednesday—and Friday
Evening from WABC

On Tuesday, Thursday and Saturday we broadcast from this station weather reports for the convenience of the public. Watch your local newspapers for announcement of time.

Exhibit S. 17.

Business success depends entirely upon scientific management.
Charles M. Schwab.

Take time to deliberate, but when the time for action arrives, stop thinking and go in.
—Jackson.

If you can earn your own living and also produce a surplus, adding to the wealth and happiness of the world, you are fit to be called an educated person.
—Charles W. Eliot.

EXHIBIT S. 17.

Dividend notice—without date received by Helen Pearsall.

(Same in form as Exhibit S. 15.)

Exhibit S. 18.

EXHIBIT S. 18.

Four letters received by John Gellrich.

(Letter dated June 18, 1928.)

PUBLIC SERVICE FINANCE CORPORATION
Eight Ten Broad Street
NATIONAL STATE BANK BLDG.
Newark, N. J.

Mulberry 1313-1314 Suite 804-805
OFFICE OF THE
Secretary and Treasurer

June 18th, 1928.

Dear Stockholder:

The following is an extract from the minutes of a meeting of the board of directors of the Public Service Finance Corporation held on Thursday, June 14th, 1928.

"Resolved, That the quarterly dividend of one and one-half per cent (1½%) together with a participating dividend of one per cent. (1%) upon the outstanding Preferred Stock be and hereby is declared, said dividend to be paid on the second day of July, 1928, and to be payable to stockholders who appear of record at the close of business on June 20th, 1928, and that the treasurer of the corporation be hereby instructed and fully authorized to give due notice of such dividend and to pay the same on the date set forth."

Cordially yours,

DEWI T. EVANS,
Treasurer.

FRANK R. TAPPAN,
Secretary.

DTE: K R. G.

Exhibit S. 18.

(Letter dated June 30, 1928.)

UNIVERSAL FINANCE CORPORATION
EXECUTIVE OFFICES
Eight Ten Broad Street
Suite 804-805
NATIONAL STATE BANK BLDG.
Newark, N. J.

Mulberry 1313-1314.
OFFICE OF THE
Secretary and Treasurer

BRANCH OFFICE
787 Broad street
NEWARK, N. J.

June 30th, 1928.

To the Subscribers of 6% Participating Preferred Stock, Public Service Finance Corporation (name changed to Universal Finance Corporation):

At a meeting of the Board of Directors held on June 14th, 1928, the following resolution was adopted:

"Whereas, the Board of Directors, authorize that subscribers to the 6% Participating Preferred Stock paying in installments, if all payments are made on the day fixed, will be entitled to interest at the rate of four per centum (4%) per annum on all payments, to be credited at the time of paying the final installment. Certificates for such stock will be issued when and as the same is fully paid."

Dewi T. Evans,
Treasurer.

Frank R. Tappan,
Secretary.

Exhibit S. 18.

(Letter dated June 30, 1928.)

UNIVERSAL FINANCE CORPORATION
EXECUTIVE OFFICES
Eight Ten Broad Street
Suite 804-805
NATIONAL STATE BANK BLDG.
Newark, N. J.

Mulberry 1313-1314.
OFFICE OF THE
Secretary and Treasurer

BRANCH OFFICE
787 Broad street
NEWARK, N. J.

June 30th, 1928.

To the Subscribers:

Owing to confusion of the name of Public Service Finance Corporation with other companies organized in this State, Pennsylvania, and elsewhere, and the attendant inconvenience caused thereby, the Board of Directors at a special meeting called for the purpose, decided to amend the charter of the Company by changing the name to Universal Finance Corporation, the management, conduct, and policy of the company to remain the same.

In addition to the main office in the National State Bank Building at 810 Broad street, Newark, New Jersey, the company has found it necessary to open a branch office. This branch office is located at 787 Broad street which is at the corner of Broad and Market streets in Newark, the third busiest corner in the United States.

Due to the demand for additional stock by the present stockholders and others, and the contemplated expansion through branch offices, the charter has also been amended to provide for additional capital. This stock is now available for subscription.

The company is making rapid progress. The number of secured loans granted is increasing daily.

The Broad and Market National Bank, located at 800 Broad street, Newark, New Jersey, is the authorized

Exhibit S. 18.

transfer agent of the stock of the Universal Finance Corporation.

We are pleased to call your attention to the enclosed notice to subscribers.

Very truly yours,

PUBLIC SERVICE FINANCE CORPORATION.

(Letter dated September 22, 1928.)

UNIVERSAL FINANCE CORPORATION

EXECUTIVE OFFICES

Eight Ten Broad Street

Suite 804-805

NATIONAL STATE BANK BLDG.

Newark, N. J.

Mulberry 1313-1314.

OFFICE OF THE

Secretary and Treasurer

BRANCH OFFICE

787 Broad street

NEWARK, N. J.

September 22, 1928.

Dear Stockholder:

The following is an extract from the minutes of a meeting of the Board of Directors of the Universal Finance Corporation held on Friday, September 21, 1928.

"Resolved, That the quarterly dividend for the quarter ending September 29, 1928, of one and one-half per cent. (1½%) together with a participating dividend of one per cent. (1%) upon the outstanding Preferred Stock, be and hereby is declared, said dividend to be paid on the first day of October, 1928, and to be payable to stockholders who appear on record at the close of business on September 20th, 1928, and that the treasurer of the corporation be hereby instructed and fully authorized to give due notice of such dividend and to pay the same on the date set forth."

Cordially yours,

DEWI T. EVANS,

Secretary.

DTE: S W

Exhibit S. 19.

EXHIBIT S. 19.

Stock book of Universal Finance Corporation showing issue of no par value stock.

(Part of Exhibit S. 19; No Par Certificate)

Incorporated Under the Laws of
New Jersey

No. 100 Shares

(Cut)

UNIVERSAL FINANCE CORPORATION
Capital Stock 15,000 Shares, No Par Value
Full Paid, Non Assessable

THIS CERTIFIES THAT.....is the owner of .....Shares of NO PAR VALUE each of the Capital Stock of UNIVERSAL FINANCE CORPORATION transferable only on the books of the Corporation by the holder hereof in person or by Attorney upon surrender of this Certificate properly endorsed.

(SEAL)

IN WITNESS WHEREOF, the said Corporation has caused this Certificate to be signed by its duly authorized officers and to be sealed with the Seal of the Corporation

this.....day of..... A. D. 19.....

....., ...
Treasurer President

SHARES No Par Value EACH

Exhibit S. 19.

For Value Received.....hereby sell, assign and transfer unto .....

..... Shares of the Capital Stock represented by the within Certificate, and do hereby irrevocably constitute and appoint..... to transfer the said Stock on the books of the within named Corporation with full power of substitution in the premises.

Dated.....19.....

In presence of

.....

.....

NOTICE. The signature of this assignment must correspond with the name as written upon the face of the certificate, in every particular, without alteration or enlargement, or any change whatever.

(Summary of Exhibit S. 19.)

Statement taken from stubs of stock book of Universal Finance Corporation showing issuance of certificates of stock of no par value.

No. of Cert.	Name of Stockholder	Date	No. of Shares
1	Cancelled—not issued		
2	Frank R. Tappan	June 19/28	334
3	Dewi T. Evans	"	333
4	Richard J. Fitzmaurice	"	333
5	D. D. Hollenbaugh	"	500
6	Belle M. Edwards	"	1333
7	Annette H. Edwards	"	1334
8	T. P. Edwards	"	833

Exhibit S. 20.

EXHIBIT S. 20.

Stock book of Public Service Finance Corporation showing issue of no par value stock.

(Part of Exhibit S. 20; No Par Certificate)

Incorporated Under the Laws of

No. 23 New Jersey Shares

(Cut)

PUBLIC SERVICE FINANCE CORPORATION

5000 Shares, No Par Value
Full Paid, Non Assessable

THIS CERTIFIES THAT.....is the owner of .....Shares of NO PAR VALUE each of the Capital Stock of PUBLIC SERVICE FINANCE CORPORATION transferable only on the books of the Corporation by the holder hereof in person or by Attorney upon surrender of this Certificate properly endorsed.

(SEAL)

IN WITNESS WHEREOF, the said Corporation has caused this Certificate to be signed by its duly authorized officers and to be sealed with the Seal of the Corporation

this.....day of..... A. D. 19.....

....

Treasurer President

SHARES No Par Value EACH

New Jersey State Library

Exhibit S. 20.

For Value Received.....hereby sell, assign and transfer unto .....
..... Shares of the Capital Stock represented by the within Certificate, and do hereby irrevocably constitute and appoint..... to transfer the said Stock on the books of the within named Corporation with full power of substitution in the premises.

Dated.....19.....

In presence of

.....

.....

NOTICE. The signature of this assignment must correspond with the name as written upon the face of the certificate, in every particular, without alteration or enlargement, or any change whatever.

(Summary of Exhibit S. 20.)

Statement taken from stubs of stock book of Public Service Finance Corporation showing issuance of certificates of stock of no par value

No. of Cert.	Name of Stockholder	Date	No. of Shares
1	Frank R. Tappan	Mch. 15/28	334
2	Dewi T. Evans	"	333
3	Richard J. Fitzmaurice	"	100
4	" "	"	100
5	" "	"	100
6	" (Void—never issued)		
7	"	"	33
8	D. D. Hollenbaugh	"	500
9	Belle M. Edwards	"	1333
10	Annette H. Edwards	"	1334
11	T. P. Edwards	"	833

Exhibit D. 1.

DEFENDANTS' EXHIBITS.

EXHIBIT D. 1.

Subpoena issued to Financial Investment Corporation, dated December 18, 1928.

STATE OF NEW JERSEY

TO FINANCIAL INVESTMENT CORPORATION, GREETING:

By authority of Chapter 79 of the Laws of 1927, we command you that, laying aside all business and excuses, you by your president, vice-president, secretary and treasurer be and appear before RICHARD C. PLUMER, Special Assistant Attorney General of the State of New Jersey (at three o'clock in the afternoon on Wednesday, December 19, 1928) at Room 1430, 24 Commerce Street, Newark, New Jersey for the purpose of examination as to all the facts and circumstances concerning the issuance, sale, offer for sale, purchase, offer to purchase, promotion, negotiation, advertisement and distribution of securities within this State by the Financial Investment Corporation, and you are further commanded to produce the following records, books, documents, accounts and papers the same being relevant and material to said examination.

A complete file of all radio talks

AND THIS YOU ARE IN NOWISE TO OMIT.

Edward L. Katzenbach
Attorney General

Richard C. Plumer
Spec. Asst. Atty. Gen.

Newark, N. J.
December 17, 1928.

Exhibit D. 1.

State of *New Jersey*
County of *Essex* } ss.

J. Branton Wallace, being duly sworn according to law, on his oath deposes and says that he is a person who has been designated by the Attorney General of the State of New Jersey to serve the subpoena provided for by Section 3 (c) of the New Jersey Securities Act, that on *Dec. 17, 1928* he served the attached subpoena on *Financial Investment Corp.* by leaving a duplicate copy thereof with *Alexander Edwards, registered agent at Room 509 Griffith Bldg., Broad St., Newark, N. J.*

J. Branton Wallace

Sworn to and subscribed
before me this 18th day
of December, A. D. 1928

C. Harrold Gascoyne
A Master in Chancery
of New Jersey

Exhibit D. 2.

EXHIBIT D. 2.

Subscription contract of Joseph S. Armour, dated July 20, 1928.

Apl—7/30/28—$100 as K G

SUBSCRIPTION CONTRACT

No Shares.....

Original

Phone Mulberry 1313-1314

58

FINANCIAL INVESTMENT CORPORATION
605 BROAD STREET, NEWARK, N. J.
Gentlemen:

You are hereby authorized to purchase for me *10* shares of the Preferred Stock of the UNIVERSAL FINANCE CORP., a New Jersey Corportation, at Fifteen Dollars ($15.00) per share.

I understand that the par value of such stock is Ten Dollars ($10.00) per share; that it is entitled to a preferred cumulative dividend at the rate of 6% per share per year (from date of issue) before any dividend on common stock; and that after payment of said dividend at the rate of 6% per share for each fiscal year to the holders of Preferred Stock any further amount declared in dividends for said year shall be divided among the holders of Preferred and Common Stock, share and share alike; that this stock is non-voting except in the event the preferred dividend thereon is not paid for two years, and except as otherwise provided by law.

I, the undersigned hereby subscribe for *10* shares of the Preferred Stock of the UNIVERSAL FINANCE CORP., a New Jersey Corporation, at Fifteen Dollars ($15.00) per share payable Five Dollars ($5.00) on each and every share upon the signing of this agreement and subsequent thereto the sum of *$5.00* monthly at the office of the UNIVERSAL FINANCE CORP., beginning.....10, 19...., without notice until the total sum of Dollars (*$150*) has been paid, and upon my failure to make installment payments for a period of three or more months after last payment I agree to a complete cancellation of this contract and the costs to liquidate same and the corporation shall not be obligated to issue any shares other than for the monthly payments paid in.

No statements or representations that are not contained in this agreement shall be binding upon the subscriber or the CORPORATION.

This agreement shall be made in duplicate and a copy left with the subscriber.

Received $

Received $*5.00 to be paid on or about July 28th 1928* Full First } Payment.

FINANCIAL INVESTMENT CORPORATION
By *W. F. Cawthorne*
Representative.

Joseph F. Armour
Hamilton Beach, L. I.

Date *July 20th 1928*
Signature *Joseph F. Armour.*
Address *Hamilton Beach L. I.*
City and State.....

Exhibit D. 4.

EXHIBIT D. 3 for Identification.

Duplicate subscription contract of Joseph S. Armour, dated July 20, 1928.

This is the same as Exhibit S. 12.

EXHIBIT D. 4.

(Same as Exhibit D. 21 for Identification.)

Copy of certificate of preferred stock of Universal Finance Corporation.

Incorporated Under the Laws of New Jersey

Number 648 (Cut) 20 Shares

UNIVERSAL FINANCE CORPORATION

Authorized 75,000 Shares
Par Value $10

THIS CERTIFIES, THAT THOMAS I. PERRY is the Owner of TWENTY fully paid and non assessable shares of the PREFERRED STOCK of the Par Value of Ten Dollars each of UNIVERSAL FINANCE CORPORATION transferable only on the books of the Corporation by the holder hereof in person or by duly authorized attorney upon surrender of this certificate properly endorsed.

The designations, preferences, privileges and voting powers, or restrictions and qualifications thereof, respectively attaching to the preferred and common stock are as follows:

The holders of record of such preferred stock shall be entitled to receive, when and as declared, from the surplus or net profits of the Corporation, dividends at the rate of sixty cents (60c.) per share per annum, payable quarterly, semi-annually, or annually, as may be determined by the Corporation's Board of Directors, before any dividend shall be declared, paid upon or set aside for the common stock, and such preferred dividends

Exhibit D. 4.

shall be cumulative from date of issue, so that if in any dividend period or periods full dividends upon the outstanding preferred stock shall not have been paid, the deficiency shall be declared and paid or set aside for payment before any dividends shall be declared or paid upon or set aside for the common stock.

Out of any surplus or net profits of this corporation remaining after full cumulative dividends as aforesaid upon the preferred stock then outstanding shall have been paid for all past dividend periods, and after full dividends on the preferred stock for the current dividend period shall have been declared or paid or set aside for payment, then, and not otherwise, the Board of Directors may declare and pay dividends upon both the preferred and common stock, such dividends, however, to be payable equally, upon both such classes of stock.

In the event of any liquidation, dissolution or winding up (whether voluntary or involuntary) of this Corporation, the holders of the preferred stock shall be entitled to be paid in full the par value of their shares plus all unpaid dividends accrued thereon before any sums shall be paid to, or any assets distributed among, the holders of the common stock; and after the payment to the holders of the preferred stock of its par value and the unpaid accrued dividends thereon, the remaining assets and funds shall be divided among and paid to the holders of both the preferred and common stock, share and share alike.

The preferred stock shall have no voting power except as otherwise expressly provided by statute, and except in the event of dissolution of the Corporation, and except that in case the Corporation shall fail to declare and pay the full regular dividend on the preferred stock for any dividend period and such default shall not have been remedied during the immediately ensuing two years, thereupon and so long as such default continues the holders of record of the outstanding preferred stock in respect of which such default exists shall be vested with the same voting powers as the holders of the common stock. Upon such default being remedied the power of the preferred stockholders to vote as herein provided shall cease; subject, however, to be again revived upon the subsequent happening of a like default and the continuance thereof as above provided.

The Corporation may, through its Board of Directors, confer upon the holders of any of the Gold Notes or Certificates of Indebtedness or Bonds of this Corporation the right to share in

Exhibit D. 4.

the net profits of the Corporation in such manner, and upon such conditions, and to such extent as the Board of Directors may from time to time determine. Such right shall take priority over the rights of the holders of the preferred stock and common stock of the Corporation.

No holder of stock of this Corporation of any class shall have any pre-emptive or preferential right of subscription to, or purchase of, any shares of any class of stock of this Corporation, whether now or hereafter authorized, or to any obligations convertible into stock of this Corporation, nor any right of subscription to, or purchase of, any thereof other than such, if any as the Board of Directors in its discretion may from time to time determine, and at such price as the Board of Directors may from time to time fix; and any shares of stock or convertible obligations which the Board of Directors may determine to offer for subscription or purchase to the holders of stock may, as said Board shall determine, be offered exclusively either to holders of preferred stock or to holders of common stock, or partly to the holders of preferred stock and partly to the holders of common stock, and in such case in such proportions as between said classes of stock as the Board of Directors in its discretion may determine.

WITNESS the seal of the Corporation and the signatures of its duly authorized Officers affixed this 14th day of Dec. 1928.

D. D. Hollenbaugh
President

Dewi T. Evans
Treasurer

SHARES $10. EACH

Exhibit D. 5.

EXHIBIT D. 5.

Subscription contract of Anna MacDonald and William MacDonald, dated December 3, 1928.

Ack 500 00—12/4/28 A V T

SUBSCRIPTION CONTRACT

No Shares.....*80*..... Original

Phone Mulberry 1313-1314
627

FINANCIAL INVESTMENT CORPORATION
605 BROAD STREET, NEWARK, N. J.

Gentlemen:

You are hereby authorized to purchase for me *Eighty* shares of the Preferred Stock of the UNIVERSAL FINANCE CORP., a New Jersey Corporation, at Fifteen Dollars ($15.00) per share.

I understand that the par value of such stock is Ten Dollars ($10.00) per share; that it is entitled to a preferred cumulative dividend at the rate of 6% per share per year (from date of issue) before any dividend on common stock; and that after payment of said dividend at the rate of 6% per share for each fiscal year to the holders of Preferred Stock any further amount declared in dividends for said year shall be divided among the holders of Preferred and Common Stock, share and share alike; that this stock is non-voting except in the event the preferred dividend thereon is not paid for two years, and except as otherwise provided by law.

I, the undersigned. hereby subscribe for *80* shares of the Preferred Stock of the UNIVERSAL FINANCE CORP., a New Jersey Corporation, at Fifteen Dollars ($15.00) per share payable Five Dollars ($5.00) on each and every share upon the signing of this agreement and subsequent thereto the sum of *25* monthly at the office of the UNIVERSAL FINANCE CORP., beginning *Jan 5*, 1929, without notice until the total sum of Dollars ($*1200.*) has been paid, and upon my failure to make installment payments for a period of three or more months after last payment I agree to a complete cancellation of this contract and the costs to liquidate same and the corporation shall not be obligated to issue any shares other than for the monthly payments paid in.

This agreement shall be made in duplicate and a copy left with the subscriber.

Received $*500.00* Full / First } Payment.

FINANCIAL INVESTMENT CORPORATION
By *Homer G. Angle*
Representative.

W. M. McDonald shares in both names

Date *Dec 3 1928*
Signature *Anna Mac Donald*
Address *7916 6th ave.*
City and State *Brooklyn N. Y.*

Make checks payable to Financial Investment Corporation.

Exhibit D. 6.

EXHIBIT D. 6.

Subscription contract of Frank Hurley dated December 4, 1928.

Ack 750 00 12/5/28 A V T

SUBSCRIPTION CONTRACT

No. Shares.....*50*.....

Original

Phone Mulberry 1313-1314
656

FINANCIAL INVESTMENT CORPORATION
605 BROAD STREET, NEWARK, N. J.

Gentlemen:

You are hereby authorized to purchase for me *fifty* shares of the Preferred Stock of the UNIVERSAL FINANCE CORP., a New Jersey Corporation, at Fifteen Dollars ($15.00) per share.

I understand that the par value of such stock is Ten Dollars ($10.00) per share; that it is entitled to a preferred cumulative dividend at the rate of 6% per share per year (from date of issue) before any dividend on common stock; and that after payment of said dividend at the rate of 6% per share for each fiscal year to the holders of Preferred Stock any further amount declared in dividends for said year shall be divided among the holders of Preferred and Common Stock, share and share alike; that this stock is non-voting except in the event the preferred dividend thereon is not paid for two years, and except as otherwise provided by law.

I, the undersigned, hereby subscribe for *50* shares of the Preferred Stock of the UNIVERSAL FINANCE CORP., a New Jersey Corporation, at Fifteen Dollars ($15.00) per share payable Five Dollars ($5.00) on each and every share upon the signing of this agreement and subsequent thereto the sum of *20.* monthly at the office of the UNIVERSAL FINANCE CORP., beginning.....10, 19...., without notice until the total sum of Dollars ($*750*) has been paid, and upon my failure to make installment payments for a period of three or more months after last payment I agree to a complete cancellation of this contract and the costs to liquidate same and the corporation shall not be obligated to issue any shares other than for the monthly payments paid in.

This agreement shall be made in duplicate and a copy left with the subscriber.

Received $*750* Full / First } Payment.

FINANCIAL INVESTMENT CORPORATION

By *Homer G. Angle*
Representative.

Date *Dec 4 1928*
Signature *Frank L. Hurley*
Address *14 Gelston Ave.*
City and State *Brooklyn, N. Y.*

Mrs. Frances C. Hurley.

Make checks payable to Financial Investment Corporation.

Exhibit D. 7.

EXHIBIT D. 7.

Four subscription contracts of John Thomas, dated September 5th, September 5th, September 14th and September 24, 1928.

(Contract of September 5, 1928—10 shares)

Ack $150.00—9/12/28 Ack $20 as—K. G. 9/6/28.
superceding previous acknowledgment.

SUBSCRIPTION CONTRACT

No. Shares..... Original

118

Phone Mulberry 1313-1314

FINANCIAL INVESTMENT CORPORATION
605 BROAD STREET, NEWARK, N. J.

Gentlemen:

You are hereby authorized to purchase for me *.10* shares of the Preferred Stock of the UNIVERSAL FINANCE CORP., a New Jersey Corporation, at Fifteen Dollars ($15.00) per share.

I understand that the par value of such stock is Ten Dollars ($10.00) per share; that it is entitled to a preferred cumulative dividend at the rate of 6% per share per year (from date of issue) before any dividend on common stock; and that after payment of said dividend at the rate of 6% per share for each fiscal year to the holders of Preferred Stock any further amount declared in dividends for said year shall be divided among the holders of Preferred and Common Stock, share and share alike; that this stock is non-voting except in the event the preferred dividend thereon is not paid for two years, and except as otherwise provided by law.

I, the undersigned, hereby subscribe for *10* shares of the Preferred Stock of the UNIVERSAL FINANCE CORP., a New Jersey Corporation, at Fifteen Dollars ($15.00) per share payable Five Dollars ($5.00) on each and every share upon the signing of this agreement and subsequent thereto the sum of *50.* monthly at the office of the UNIVERSAL FINANCE CORP., beginning.....10, 19...., without notice until the total sum of Dollars ($*150.*) has been paid, and upon my failure to make installment payments for a period of three or more months after last payment I agree to complete cancellation of this contract and the costs to liquidate same and the corporation shall not be obligated to issue any shares other than for the monthly payments paid in.

This agreement shall be made in duplicate and a copy left with the subscriber.

Received $*150* Full / First } Payment.

FINANCIAL INVESTMENT CORPORATION
By *W. F. Cawthorne*
Representative.

Date *Sept 5- 28*
Signature *John Thomas*
Address *56 Pennington St*
City and State *Newark N J*

Make checks payable to Financial Investment Corporation.

Exhibit D. 7.

(Second contract of September 5, 1928—10 shares)

Ack $150. as 9/6/28.—K. R. G.

SUBSCRIPTION CONTRACT

No. Shares.....

Original

Phone Mulberry 1313-1314

90

FINANCIAL INVESTMENT CORPORATION
605 BROAD STREET, NEWARK, N. J.

Gentlemen:

You are hereby authorized to purchase for me *10* shares of the Preferred Stock of the UNIVERSAL FINANCE CORP., a New Jersey Corporation, at Fifteen Dollars ($15.00) per share.

I understand that the par value of such stock is Ten Dollars ($10.00) per share; that it is entitled to a preferred cumulative dividend at the rate of 6% per share per year (from date of issue) before any dividend on common stock; and that after payment of said dividend at the rate of 6% per share for each fiscal year to the holders of Preferred Stock any further amount declared in dividends for said year shall be divided among the holders of Preferred and Common Stock, share and share alike; that this stock is non-voting except in the event the preferred dividend thereon is not paid for two years, and except as otherwise provided by law.

I, the undersigned, hereby subscribe for.....shares of the Preferred Stock of the UNIVERSAL FINANCE CORP., a New Jersey Corporation, at Fifteen Dollars ($15.00) per share payable Five Dollars ($5.00) on each and every share upon the signing of this agreement and subsequent thereto the sum of.....monthly at the office of the UNIVERSAL FINANCE CORP., beginning.....10, 19...., without notice until the total sum of Dollars ($.....) has been paid, and upon my failure to make installment payments for a period of three or more months after last payment I agree to a complete cancellation of this contract and the costs to liquidate same and the corporation shall not be obligated to issue any shares other than for the monthly payments paid in.

This agreement shall be made in duplicate and a copy left with the subscriber.

Received *$150* Full / First } Payment.

FINANCIAL INVESTMENT CORPORATION

By *W. F. Cawthorne*

Representative.

Date *Sept 5- 1928*
Signature *John Thomas*
Address *56 Pennington St*
City and State *Newark N J*

Make checks payable to Financial Investment Corporation.

Exhibit D. 7.

(Contract of September 14, 1928—30 shares)

Ack $450.00—9/14/29—K L

SUBSCRIPTION CONTRACT

No. Shares.....

Original
Phone Mulberry 1313-1314
117

FINANCIAL INVESTMENT CORPORATION
605 BROAD STREET, NEWARK, N. J.

Gentlemen:

You are hereby authorized to purchase for me *30* shares of the Preferred Stock of the UNIVERSAL FINANCE CORP., a New Jersey Corporation, at Fifteen Dollars ($15.00) per share.

I understand that the par value of such stock is Ten Dollars ($10.00) per share; that it is entitled to a preferred cumulative dividend at the rate of 6% per share per year (from date of issue) before any dividend on common stock; and that after payment of said dividend at the rate of 6% per share for each fiscal year to the holders of Preferred Stock any further amount declared in dividends for said year shall be divided among the holders of Preferred and Common Stock, share and share alike; that this stock is non-voting except in the event the preferred dividend thereon is not paid for two years, and except as otherwise provided by law.

I, the undersigned, hereby subscribe for.....shares of the Preferred Stock of the UNIVERSAL FINANCE CORP., a New Jersey Corporation, at Fifteen Dollars ($15.00) per share payable Five Dollars ($5.00) on each and every share upon the signing of this agreement and subsequent thereto the sum of.....monthly at the office of the UNIVERSAL FINANCE CORP., beginning.....10, 19...., without notice until the total sum of Dollars ($.....) has been paid, and upon my failure to make installment payments for a period of three or more months after last payment I agree to a complete cancellation of this contract and the costs to liquidate same and the corporation shall not be obligated to issue any shares other than for the monthly payments paid in.

This agreement shall be made in duplicate and a copy left with the subscriber.

Received $*450.* Full / First } Payment.

FINANCIAL INVESTMENT CORPORATION

By *W. F. Cawthorne*
Representative.

Date *Sept 14th 1928*
Signature *John Thomas*
Address *56 Pennington St*
City and State *Newark N. J.*

Make this and two subscriptions already in for one certificate 50 shares date Sept 14th—This is special service—

Make checks payable to Financial Investment Corporation.

Exhibit D. 7.

(Contract of September 24, 1928—20 shares)

Ack 20 00 9/27/28 A K G. *Ack 50 00 10/11/28 A K G*

Ack 130 00 11/1/28 AKG.
11/1 130.00

SUBSCRIPTION CONTRACT

No. Shares.....

Original

428

Phone Mulberry 1313-1314

FINANCIAL INVESTMENT CORPORATION
605 BROAD STREET, NEWARK, N. J.

Gentlemen:

You are hereby authorized to purchase for me *20* shares of the Preferred Stock of the UNIVERSAL FINANCE CORP., a New Jersey Corporation, at Fifteen Dollars ($15.00) per share.

I understand that the par value of such stock is Ten Dollars ($10.00) per share; that it is entitled to a preferred cumulative dividend at the rate of 6% per share per year (from date of issue) before any dividend on common stock; and that after payment of said dividend at the rate of 6% per share for each fiscal year to the holders of Preferred Stock any further amount declared in dividends for said year shall be divided among the holders of Preferred and Common Stock, share and share alike; that this stock is non-voting except in the event the preferred dividend thereon is not paid for two years, and except as otherwise provided by law.

I, the undersigned, hereby subscribe for *20* shares of the Preferred Stock of the UNIVERSAL FINANCE CORP., a New Jersey Corporation, at Fifteen Dollars ($15.00) per share payable Five Dollars ($5.00) on each and every share upon the signing of this agreement and subsequent thereto the sum of.....monthly at the office of the UNIVERSAL FINANCE CORP., beginning.....10, 19....., without notice until the total sum of Dollars (*$300 00*) has been paid, and upon my failure to make installment payments for a period of three or more months after last payment I agree to a complete cancellation of this contract and the costs to liquidate same and the corporation shall not be obligated to issue any shares other than for the monthly payments paid in.

This agreement shall be made in duplicate and a copy left with the subscriber.

Received *$10.00*
120 9/26 Full / First } Payment.

FINANCIAL INVESTMENT CORPORATION

By *W. F. Cawthorne*
Representative.

Date *Sept 24th 1928*
Signature *John Thomas*
Address *56 Pennington St*
City and State *Newark N J*

Make checks payable to Financial Investment Corporation.

Exhibit D. 8.

EXHIBIT D. 8.

Two subscription contracts of Martin H. Gleason, dated December 1st and December 5, 1928.

(Contract of December 1, 1928—50 shares)

Ack 750 00 12/3/28 AKG

SUBSCRIPTION CONTRACT

602

No. Shares.....*50*..... Original

Phone Mulberry 1313-1314

FINANCIAL INVESTMENT CORPORATION
605 BROAD STREET, NEWARK, N. J.

Gentlemen:

You are hereby authorized to purchase for me *fifty* shares of the Preferred Stock of the UNIVERSAL FINANCE CORP., a New Jersey Corporation, at Fifteen Dollars ($15.00) per share

I understand that the par value of such stock is Ten Dollars ($10.00) per share; that it is entitled to a preferred cumulative dividend at the rate of 6% per share per year (from date of issue) before any dividend on common stock; and that after payment of said dividend at the rate of 6% per share for each fiscal year to the holders of Preferred Stock any further amount declared in dividends for said year shall be divided among the holders of Preferred and Common Stock, share and share alike; that this stock is non-voting except in the event the preferred dividend thereon is not paid for two years, and except as otherwise provided by law.

I, the undersigned, hereby subscribe for *50* shares of the Preferred Stock of the UNIVERSAL FINANCE CORP., a New Jersey Corporation, at Fifteen Dollars ($15.00) per share payable Five Dollars ($5.00) on each and every share upon the signing of this agreement and subsequent thereto the sum of.....monthly at the office of the UNIVERSAL FINANCE CORP., beginning.....10, 19...., without notice until the total sum of Dollars ($*750.*) has been paid, and upon my failure to make installment payments for a period of three or more months after last payment I agree to a complete cancellation of this contract and the costs to liquidate same and the corporation shall not be obligated to issue any shares other than for the monthly payments paid in.

This agreement shall be made in duplicate and a copy left with the subscriber.

Received $*750* Full / First } Payment.

FINANCIAL INVESTMENT CORPORATION

By *Homer G. Angle*
Representative.

Date *Dec 1 1928*
Signature *Martin A. Gleason*
Address *258 Wyckoff Ave*
City and State *Brooklyn N. Y.*

Make checks payable to Financial Investment Corporation.

Exhibit D. 8.

(Contract of December 5, 1928—30 shares)

Ack 450 00 12/6/28 AKG.

SUBSCRIPTION CONTRACT

No. Shares.....*30*.....

Original
Phone Mulberry 1313-1314
671

FINANCIAL INVESTMENT CORPORATION
605 BROAD STREET, NEWARK, N. J.

Gentlemen:

You are hereby authorized to purchase for me *thirty* shares of the Preferred Stock of the UNIVERSAL FINANCE CORP., a New Jersey Corporation, at Fifteen Dollars ($15.00) per share.

I understand that the par value of such stock is Ten Dollars ($10.00) per share; that it is entitled to a preferred cumulative dividend at the rate of 6% per share per year (from date of issue) before any dividend on common stock; and that after payment of said dividend at the rate of 6% per share for each fiscal year to the holders of Preferred Stock any further amount declared in dividends for said year shall be divided among the holders of Preferred and Common Stock, share and share alike; that this stock is non-voting except in the event the preferred dividend thereon is not paid for two years, and except as otherwise provided by law.

I, the undersigned, hereby subscribe for *30* shares of the Preferred Stock of the UNIVERSAL FINANCE CORP., a New Jersey Corporation, at Fifteen Dollars ($15.00) per share payable Five Dollars ($5.00) on each and every share upon the signing of this agreement and subsequent thereto the sum of.....monthly at the office of the UNIVERSAL FINANCE CORP., beginning.....10, 19...., without notice until the total sum of Dollars ($*450*) has been paid, and upon my failure to make installment payments for a period of three or more months after last payment I agree to a complete cancellation of this contract and the costs to liquidate same and the corporation shall not be obligated to issue any shares other than for the monthly payments paid in.

This agreement shall be made in duplicate and a copy left with the subscriber.

Received $*450* Full / ~~First~~ } Payment.

FINANCIAL INVESTMENT CORPORATION
By *Homer G. Angle*
Representative.

Date *Dec 5 1928*
Signature *Martin H. Gleason*
Address *258 Wyckoff Ave.*
City and State *Brooklyn N. Y.*

Make checks payable to Financial Investment Corporation.

Exhibit D. 9.

EXHIBIT D. 9.

Subscription contract of Geo. Goetz—without date.

Ack 60 00 11/9/28 AKG *Ack 150 00 11/10/28 AKG*

SUBSCRIPTION CONTRACT

No. Shares.....

442

Phone Mulberry 1313-1314

FINANCIAL INVESTMENT CORPORATION
605 BROAD STREET, NEWARK, N. J.

Gentlemen:

You are hereby authorized to purchase for me.....shares of the Preferred Stock of the UNIVERSAL FINANCE CORP., a New Jersey Corporation, at Fifteen Dollars ($15.00) per share.

I understand that the par value of such stock is Ten Dollars ($10.00) per share; that it is entitled to a preferred cumulative dividend at the rate of 6% per share per year (from date of issue) before any dividend on common stock; and that after payment of said dividend at the rate of 6% per share for each fiscal year to the holders of Preferred Stock any further amount declared in dividends for said year shall be divided among the holders of Preferred and Common Stock, share and share alike; that this stock is non-voting except in the event the preferred dividend thereon is not paid for two years, and except as otherwise provided by law.

I, the undersigned, hereby subscribe for 30 shares of the Preferred Stock of the UNIVERSAL FINANCE CORP., a New Jersey Corporation, at Fifteen Dollars ($15.00) per share payable Five Dollars ($5.00) on each and every share upon the signing of this agreement and subsequent thereto the sum of *15.00* monthly at the office of the UNIVERSAL FINANCE CORP., beginning *January 4th* 10, 1929 without notice until the total sum of Dollars ($.....) has been paid, and upon my failure to make installment payments for a period of three or more months after last payment I agree to a complete cancellation of this contract and the costs to liquidate same and the corporation shall not be obligated to issue any shares other than for the monthly payments paid in.

This agreement shall be made in duplicate and a copy left with the subscriber.

George Goetz

Received $ *150.00* Full / First } Payment.

FINANCIAL INVESTMENT CORPORATION

By *J. R. Field*

Representative.

Date .....
Signature *George Goetz.*
Address *1021 Castleton Ave*
City and State *West New Brighton S. I.*

Make checks payable to Financial Investment Corporation.

Exhibit D. 10.

EXHIBIT D. 10.

Subscription contract of George R. Tennent, dated December 4, 1928.

Ack 300 00 12/4/28 AKG

SUBSCRIPTION CONTRACT

No. Shares.....

Original

Phone Mulberry 1313-1314
606

FINANCIAL INVESTMENT CORPORATION
605 BROAD STREET, NEWARK, N. J.

Gentlemen:

You are hereby authorized to purchase for me *20* shares of the Preferred Stock of the UNIVERSAL FINANCE CORP., a New Jersey Corporation, at Fifteen Dollars ($15.00) per share.

I understand that the par value of such stock is Ten Dollars ($10.00) per share; that it is entitled to a preferred cumulative dividend at the rate of 6% per share per year (from date of issue) before any dividend on common stock; and that after payment of said dividend at the rate of 6% per share for each fiscal year to the holders of Preferred Stock any further amount declared in dividends for said year shall be divided among the holders of Preferred and Common Stock, share and share alike; that this stock is non-voting except in the event the preferred dividend thereon is not paid for two years, and except as otherwise provided by law.

I, the undersigned, hereby subscribe for.....shares of the Preferred Stock of the UNIVERSAL FINANCE CORP., a New Jersey Corporation, at Fifteen Dollars ($15.00) per share payable Five Dollars ($5.00) on each and every share upon the signing of this agreement and subsequent thereto the sum of.....monthly at the office of the UNIVERSAL FINANCE CORP., beginning.....10, 19...., without notice until the total sum of Dollars ($*300*) has been paid, and upon my failure to make installment payments for a period of three or more months after last payment I agree to a complete cancellation of this contract and the costs to liquidate same and the corporation shall not be obligated to issue any shares other than for the monthly payments paid in.

This agreement shall be made in duplicate and a copy left with the subscriber.

Received $*300* Full / First } Payment.

FINANCIAL INVESTMENT CORPORATION

By *W. F. Cawthorne*

Representative.

Date *Dec 4th 1928*
Signature *Geo R. Tennent*
Address *77 Poe Ave*
City and State *Newark. N. J.*

Make checks payable to Financial Investment Corporation.

Exhibit D. 11.

EXHIBIT D. 11.

Two subscription contracts of Helen Eva Pearsall, dated October 15th and December 12, 1928.

(Contract of October 15, 1928—20 shares)

Ack 100 00 10/16/28 AKG

SUBSCRIPTION CONTRACT

No. Shares.....*20*..... Original

313

Phone Mulberry 1313-1314

FINANCIAL INVESTMENT CORPORATION
605 BROAD STREET, NEWARK, N. J.

Gentlemen:

You are hereby authorized to purchase for me *twenty* shares of the Preferred Stock of the UNIVERSAL FINANCE CORP., a New Jersey Corporation, at Fifteen Dollars ($15.00) per share.

I understand that the par value of such stock is Ten Dollars ($10.00) per share; that it is entitled to a preferred cumulative dividend at the rate of 6% per share per year (from date of issue) before any dividend on common stock; and that after payment of said dividend at the rate of 6% per share for each fiscal year to the holders of Preferred Stock any further amount declared in dividends for said year shall be divided among the holders of Preferred and Common Stock, share and share alike; that this stock is non-voting except in the event the preferred dividend thereon is not paid for two years, and except as otherwise provided by law.

I, the undersigned, hereby subscribe for *20* shares of the Preferred Stock of the UNIVERSAL FINANCE CORP., a New Jersey Corporation, at Fifteen Dollars ($15.00) per share payable Five Dollars ($5.00) on each and every share upon the signing of this agreement and subsequent thereto the sum of *10.00* monthly at the office of the UNIVERSAL FINANCE CORP., beginning Nov ....10, 1928, without notice until the total sum of Dollars ($*30*.) has been paid, and upon my failure to make installment payments for a period of three or more months after last payment I agree to a complete cancellation of this contract and the costs to liquidate same and the corporation shall not be obligated to issue any shares other than for the monthly payments paid in.

This agreement shall be made in duplicate and a copy left with the subscriber.

Received $ *100.00* Full / First } Payment.

FINANCIAL INVESTMENT CORPORATION

By *P. J. Freyland*
Representative.

Date *Oct. 15 - 1928*
Signature *Helen. Eva. Pearsall*
Address *202 Saratoga Av.*
City and State *Brooklyn N Y*

Helen-Eva. Pearsall

Make checks payable to Financial Investment Corporation.

Exhibit D. 11.

(Contract of December 12, 1928—10 shares)

(*This is a repeater on 20*)

SUBSCRIPTION CONTRACT

Ack 12/17/28 C

No Shares.....*10*.....

Original

Phone Mulberry 1313-1314

981

FINANCIAL INVESTMENT CORPORATION
605 BROAD STREET, NEWARK, N. J.

Gentlemen:

You are hereby authorized to purchase for me *ten* shares of the Preferred Stock of the UNIVERSAL FINANCE CORP., a New Jersey Corporation, at Fifteen Dollars ($15.00) per share.

I understand that the par value of such stock is Ten Dollars ($10.00) per share; that it is entitled to a preferred cumulative dividend at the rate of 6% per share per year (from date of issue) before any dividend on common stock; and that after payment of said dividend at the rate of 6% per share for each fiscal year to the holders of Preferred Stock any further amount declared in dividends for said year shall be divided among the holders of Preferred and Common Stock, share and share alike; that this stock is non-voting except in the event the preferred dividend thereon is not paid for two years, and except as otherwise provided by law.

I, the undersigned, hereby subscribe for *Ten* shares of the Preferred Stock of the UNIVERSAL FINANCE CORP., a New Jersey Corporation, at Fifteen Dollars ($15.00) per share payable Five Dollars ($5.00) on each and every share upon the signing of this agreement and subsequent thereto the sum of *5.00* monthly at the office of the UNIVERSAL FINANCE CORP., beginning *Jan* ....10, 1929, without notice until the total sum of Dollars (*$150.00*) has been paid, and upon my failure to make installment payments for a period of three or more months after last payment I agree to a complete cancellation of this contract and the costs to liquidate same and the corporation shall not be obligated to issue any shares other than for the monthly payments paid in.

This agreement shall be made in duplicate and a copy left with the subscriber.

Received $*50.00* Full / First } Payment.

FINANCIAL INVESTMENT CORPORATION

By *P. J. Freyland*

Representative.

Date *Dec 12/28*
Signature *Helen Eva Pearsall*
Address *202 Saratoga Av*
City and State*Brooklyn N Y*

Mrs. Helen Eva Pearsall

Make checks payable to Financial Investment Corporation.

Exhibit D. 12.

EXHIBIT D. 12.

Bond of Public Service Finance Corporation with National Surety Company as surety, dated April 3, 1928.

Bond recites application to Commissioner of Banking & Insurance for license to conduct the business under the statute of March 23, 1914.

In the penal sum of $5,000. to be paid to the State of New Jersey.

The condition is to "faithfully observe all laws relating to the business provided for in the above entitled Act."

Bond executed by Public Service Finance Corporation by Dale D. Hollenbaugh, President, and National Surety Company by George A. Kayser, Resident Vice-President, and countersigned by P. D. Wilesy.

Acknowledgment attached.

At the end of the bond appears the following: "I hereby approve the foregoing bond. Edward Maxson, Commissioner of Banking & Insurance of New Jersey."

Endorsement of bond, as follows:

BOND
of
UNIVERSAL FINANCE CORP.
PUBLIC SERVICE FINANCE CORPORATION
787 Broad St.
of
Newark, New Jersey
TO THE
STATE OF NEW JERSEY
Under Chap. 49, Laws of 1914

$5,000

FILED 192
APR 5 1928
Edward Maxson
Commissioner of Banking and Insurance

Exhibit D. 14.

EXHIBIT D. 13 for Identification.

Bond of Universal Finance Corporation with National Surety Company as surety; dated February 25, 1929, filed March 1, 1929.

Conditioned that Universal Finance Corporation on and after March 1, 1929, shall faithfully observe all laws relating to the business provided for in the statute (*i. e.*, Chapter 49, Laws of 1914).

EXHIBIT D. 14.

License under Chapter 49, Laws of 1914, for the year ending March 1, 1929; dated April 5, 1928—No. 554; issued to Public Service Finance Corporation and transferred to Universal Finance Corporation and address changed from 810 Broad St. to Broad & Market Streets, Newark, by endorsement dated July 2, 1928.

(275)

LICENSE

Under Chapter 49, Laws of 1914, for the Year ending March 1, 1929

STATE OF NEW JERSEY
Department of Banking and Insurance

Trenton, April 5th, 1928

WHEREAS, PUBLIC SERVICE FINANCE CORPORATION a corporation incorporated under the laws of the State of NEW JERSEY, on March 24th, 1928, at Newark, Essex County, in said State, has made application to the Commissioner of Banking and Insurance, under Chapter 49 of the Laws, of 1914, entitled "An act to define, regulate and control the business of the making of loans or advancements of money in sums of three hundred (300) dollars or less in amount, and to regulate the

Exhibit D. 14.

assignment of wages when given as security for any such loan or advancement," approved March 23rd, 1914, for a license to transact business provided for in said act, at No. 810 Broad St., Suite 805 National State Bank Bldg. in the City of Newark, in the County of Essex, in the State of New Jersey;

And Whereas, The directors of said corporation for the period ending March 1st, 1929, as set forth in its aforesaid application are the following:

Names of Directors.	Places of Residence.
Dale D. Hollenbaugh	Roselle, N. J.
Dewi T. Evans	Trenton
Frank R. Tappan	Orange

And Whereas, the said corporation has appointed Dale D. Hollenbaugh whose address is No. Van Court Inn, in the Borough of Roselle, in the County of Union State of New Jersey, to be its resident agent in said State, upon whom all judicial and other process or legal notice directed to said corporation may be served, and has filed with said Commissioner an acceptable bond in the penal sum of $5,000 for the faithful observance of all the laws relating to such business, and otherwise complied with the requirements of said act preliminary to the issuance of this license.

Now, Therefore, I Edward Maxson, Commissioner of Banking and Insurance of the State of New Jersey, hereby license and authorize said PUBLIC SERVICE FINANCE CORPORATION to conduct the business provided for in the above-entitled act, at No. 810 Broad St., National State Bank Bldg. Suite 805 in the City of Newark in the County of Essex in said State, during the year ending March 1st, 1929, unless this license shall be sooner revoked.

In Witness Whereof, I have hereunto set my hand and affixed my official seal, at Trenton, the day and year first above written.

(seal)

EDW. MAXSON
Commissioner of Banking and Insurance.

Exhibit D. 14.

(License Number 554)

☛ This license must be kept posted in a conspicuous place in the office where the business is transacted. The business cannot be transacted or solicited at any other place than that named in this license, unless a transfer to a new location is endorsed hereon by the Commissioner. The license will expire March 1st, 1929, and must be renewed on that date for the succeeding year.

This license is hereby changed to read "UNIVERSAL FINANCE CORPORATION" instead of "PUBLIC SERVICE FINANCE CORPORATION", and its address is also changed from 810 Broad St., National State Bank Bldg., to 787 Broad St., (Broad & Market Sts.) in the City of Newark, County of Essex, State of New Jersey.

EDW. MAXSON,
Commissioner of Banking and Insurance.

Dated Trenton, N. J.
July 2, 1928.

Exhibit D. 15.

EXHIBIT D. 15.

Document entitled "Information, Rules & Regulations Relating to the Business of Making Small Loans," issued by the Department of Banking & Insurance of the State of New Jersey, dated August 31, 1922.

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STATE OF NEW JERSEY
DEPARTMENT OF BANKING AND INSURANCE

Trenton, August 31, 1922.

INFORMATION, RULES AND REGULATIONS RELATING TO THE BUSINESS OF MAKING SMALL LOANS.

Copies of Chapter 49, Laws of 1914, regulating the business of making small loans, and of the blanks required to be executed by applicants for licenses, will be furnished on application to the Commissioner of Banking and Insurance, Trenton, N. J.

No license will be issued until a bond to the state of New Jersey, in the penal sum of $5,000, is filed with the Commissioner and the $50.00 license fee paid, nor, in the case of a corporation, until it has also filed an appointment of an agent, resident in New Jersey, upon whom service of process and legal notice may be made. The bond must be executed as surety by a surety company authorized by law to do business in this State. A list of qualified surety companies will be furnished upon request. A new bond must be executed and filed annually not later than the first day of March.

All licenses expire and are renewable March 1st next following the date when issued. As the transaction of the business without a license is in violation of the law and renders the offender liable to indictment and punishment for misdemeanor, licensees should apply for renewal a sufficient time in advance of the expiration of the then

current license year. The renewal bond should be dated March 1st.

Each license will be given a number by which the place of business licensed is officially known, and each place of business shall in every advertisement and on all papers used in the conduct of the business, use the number assigned to it by the Commissioner.

The license must be kept posted in a conspicuous place in the office where the business is transacted. No licensee shall transact or solicit business under any other name or at any other place than that named in the license. Not more than one office or place of business shall be maintained under the same license. In case of a removal, application must be made to the Commissioner for his endorsement of a transfer to the new location.

By the above law of 1914, chapter 49, the Commissioner is empowered to revoke the license of any licensee for violation of any of its provisions or for failure to comply with any rule or regulation made by the Commissioner in pursuance of the authority thereof. This power will be exercised in all cases where the circumstances demand it.

Special attention is directed to sections 1, 5 and 7 of the act, the provisions of which must be carefully observed in the conduct of the business.

The Commissioner will exercise the right to censor all advertisements that relate to the business.

All licensees shall make a report to the Commissioner, in writing, of every suit brought upon any bond given by such licensee, not later than ten days from the return day of the writ or other process by which suit or action was commenced, which report shall set forth the *ad damnum* of the writ and the names and residences of the parties to such suit, the court in which it was brought and the docket number thereof, if any. And if such suit was not duly entered in such court such fact shall be stated, and upon any late entry of such suit notice thereof in writing

shall be sent by such licensee to the Commissioner within twenty-four hours of such late entry. And when any such suit is finally disposed of, either by judgment or decree, or order of the court, or by settlement, such licensee shall, within twenty-four hours thereof, give notice to said Commissioner, in writing, setting forth the result of such suit or settlement, and the amount and terms of such judgment, order or decree, and the terms of such settlement, and the amount of money or other consideration given or promised therefor.

MAKING OF LOANS.

In the routine business of making small loans the following rules shall be observed:

1. Each licensee shall file with the Commissioner the name of each person who shall, on behalf of such licensee, make any loan, either directly or indirectly, and also stating what relation the person bears to the business. Notice of the discharge of any such person and the reason therefor, also notice of the addition of any person, shall immediately be given to the Commissioner when the changes are made.

2. Each person who is to make loans under the license shall be familiar with the law and the rules and regulations relating to the business of making small loans.

3. Each loan made shall have its proper consecutive number. The obligation of the borrower expressed in the form of a note shall bear such loan number, also the date when the note is made, the actual amount of the loan, the time for which the loan is made and the rate of interest to be paid.

4. A lender shall not require or receive from any borrower more than three signatures of that borrower in making a loan, one of which is made on the application by the borrower containing such information as the lender may require; the second is made on the note, and the third is made on the security, if any security is given.

Exhibit D. 15.

5. No lender shall ask for or receive, or have in his possession any unfilled notes, or any incomplete form or incomplete paper bearing the signature of a borrower or any note other than the true evidence of the obligation incurred by the borrower at the time when the money was delivered to the borrower.

6. The borrower is entitled to have a copy of every paper that may be passed in the making of a loan.

7. When a note is paid the borrower must be given the entire note, not a torn note nor a signature, but the *entire note*; also full title to whatever the borrower may have given to secure the note.

8. A lender shall not loan money to any person under twenty-one years of age. Money shall not be loaned to any person who is intoxicated when making the application. Money shall not be loaned to a person when notice has been given by one dependent upon that person that a loan shall not be made.

ANNUAL REPORT.

9. Each lender must file with the Commissioner, on or before December 20th, annually, a report, on blanks to be furnished by him, showing the assets and liabilities, at the close of business on November 30th last preceding and the other data called for therein. A separate report must be filed by each branch office.

RECORDS AND FORMS.

10. Each lender shall keep or cause to be kept in and for the office where the business is transacted a full and complete record as to all loans made. A cash book and ledger shall be kept by each lender. The cash book shall be a record of each amount paid out and the purpose for which it was paid, and each amount received and on what account; and it shall be balanced daily. If the records or the blank forms used by any lender do not meet with the Commissioner's approval, they shall be changed or added to as he shall direct.

EXHIBIT D. 16.

Document entitled "Information, Rules & Regulations Relating to the Business of Making Small Loans," issued by the Department of Banking & Insurance of the State of New Jersey, dated August 31, 1922, including additional rules issued December 26, 1928.

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STATE OF NEW JERSEY
DEPARTMENT OF BANKING AND INSURANCE

Trenton, August 31, 1922.

INFORMATION, RULES AND REGULATIONS RELATING TO THE BUSINESS OF MAKING SMALL LOANS.

Copies of Chapter 49, Laws of 1914, regulating the business of making small loans, and of the blanks required to be executed by applicants for licenses, will be furnished on application to the Commissioner of Banking and Insurance, Trenton, N. J.

No license will be issued until a bond to the state of New Jersey, in the penal sum of $5,000, is filed with the Commissioner and the $50.00 license fee paid, nor, in the case of a corporation, until it has also filed an appointment of an agent, resident in New Jersey, upon whom service of process and legal notice may be made. The bond must be executed as surety by a surety company authorized by law to do business in this State. A list of qualified surety companies will be furnished upon request. A new bond must be executed and filed annually not later than the first day of March.

All licenses expire and are renewable March 1st next following the date when issued. As the transaction of the business without a license is in violation of the law and renders the offender liable to indictment and punishment

for misdemeanor, licensees should apply for renewal a sufficient time in advance of the expiration of the then current license year. The renewal bond should be dated March 1st.

Each license will be given a number by which the place of business licensed is officially known, and each place of business shall in every advertisement and on all papers used in the conduct of the business, use the number assigned to it by the Commissioner.

The license must be kept posted in a conspicuous place in the office where the business is transacted. No licensee shall transact or solicit business under any other name or at any other place than that named in the license. Not more than one office or place of business shall be maintained under the same license. In case of a removal, application must be made to the Commissioner for his endorsement of a transfer to the new location.

By the above law of 1914, chapter 49, the Commissioner is empowered to revoke the license of any licensee for violation of any of its provisions or for failure to comply with any rule or regulation made by the Commissioner in pursuance of the authority thereof. This power will be exercised in all cases where the circumstances demand it.

Special attention is directed to sections 1, 5 and 7 of the act, the provisions of which must be carefully observed in the conduct of the business.

The Commissioner will exercise the right to censor all advertisements that relate to the business.

All licensees shall make a report to the Commissioner, in writing, of every suit brought upon any bond given by such licensee, not later than ten days from the return day of the writ or other process by which suit or action was commenced, which report shall set forth the *ad damnum* of the writ and the names and residences of the parties to such suit, the court in which it was brought and the docket number thereof, if any. And if such suit was not duly entered in such court such fact shall be stated, and

Exhibit D. 16.

upon any late entry of such suit notice thereof in writing shall be sent by such licensee to the Commissioner within twenty-four hours of such late entry. And when any such suit is finally disposed of, either by judgment or decree, or order of the court, or by settlement, such licensee shall, within twenty-four hours thereof, give notice to said Commissioner, in writing, setting forth the result of such suit or settlement, and the amount and terms of such judgment, order or decree, and the terms of such settlement, and the amount of money or other consideration given or promised therefor.

Small loan companies are prohibited from using or suffering to be used upon their stationery, records, forms, literature, or any advertising matter whatsoever, the words "bank," "banking," "industrial bank," "industrial banking" or any other kind of bank or banking, or any other words whatsoever that might in anywise give rise to any possible inference that such small loan company was in any sense a bank or was doing in anywise a banking business; also are prohibited from making any representation to the effect that such small loan company is under the supervision of this Department; these prohibitions extend not only to matters written or printed, but also to any communication whether by personal conference, telephone, or radio; and further that each and every small loan company shall forthwith forbid and take immediate steps to effectually repress any and all of its agents, employees, salesmen, sales agencies, sales distributors, fiscal agencies, or any person, firm or corporation engaged in selling or advertising its stock for sale, from using such or similar words or representations or any of them as an inducement to the sale of the stock of such small loan companies, or for any other purpose whatsoever, or in anywise in association or connection with such small loan companies, or their business, or their stock issues; that any violation of the rule or any part thereof will result in an immediate revocation of the license.

Exhibit D. 16.

This Department reserves to itself the right to revoke such license irrespective of whether the above forbidden representations are made by authority of the licensee or not.

MAKING OF LOANS.

In the routine business of making small loans the following rules shall be observed:

1. Each licensee shall file with the Commissioner the name of each person who shall, on behalf of such licensee, make any loan, either directly or indirectly and also stating what relation the person bears to the business. Notice of the discharge of any such person and the reason therefor, also notice of the addition of any person, shall immediately be given to the Commissioner when the changes are made.

2. Each person who is to make loans under the license shall be familiar with the law and the rules and regulations relating to the business of making small loans.

3. Each loan made shall have its proper consecutive number. The obligation of the borrower expressed in the form of a note shall bear such loan number, also the date when the note is made, the actual amount of the loan, the time for which the loan is made and the rate of interest to be paid.

4. A lender shall not require or receive from any borrower more than three signatures of that borrower in making a loan, one of which is made on the application by the borrower containing such information as the lender may require; the second is made on the note, and the third is made on the security, if any security is given.

5. No lender shall ask for or receive, or have in his possession any unfilled notes, or any incomplete form or incomplete paper bearing the signature of a borrower or any note other than the true evidence of the obligation incurred by the borrower at the time when the money was delivered to the borrower.

Exhibit D. 16.

6. The borrower is entitled to have a copy of every paper that may be passed in the making of a loan.

7. When a note is paid the borrower must be given the entire note, not a torn note nor a signature, but the *entire note*; also full title to whatever the borrower may have given to secure the note.

8. A lender shall not loan money to any person under twenty-one years of age. Money shall not be loaned to any person who is intoxicated when making the application. Money shall not be loaned to a person when notice has been given by one dependent upon that person that a loan shall not be made.

ANNUAL REPORT.

9. Each lender must file with the Commissioner, on or before December 20th, annually, a report, on blanks to be furnished by him, showing the assets and liabilities, at the close of business on November 30th last preceding and the other data called for therein. A separate report must be filed by each branch office.

RECORDS AND FORMS.

10. Each lender shall keep or cause to be kept in and for the office where the business is transacted a full and complete record as to all loans made. A cash book and ledger shall be kept by each lender. The cash book shall be a record of each amount paid out and the purpose for which it was paid, and each amount received and on what account; and it shall be balanced daily. If the records or the blank forms used by any lender do not meet with the Commissioner's approval, they shall be changed or added to as he shall direct.

~~The parent company must be incorporated in the State of New Jersey and have a paid-in capital stock of not less than $50,000 and $50,000 for every branch. The certificate of incorporation should empower the company to do only a small loan business.~~

~~Individuals must have at least $25,000 of unencumbered assets.~~

EXHIBIT D. 17.

Additional rules and regulations relating to business of making small loans under Chapter 49, Laws of 1914, issued by the Bureau of Banking of the Department of Banking & Insurance of the State of New Jersey, dated December 26, 1928.

STATE OF NEW JERSEY
DEPARTMENT OF BANKING AND INSURANCE
BUREAU OF BANKING
TRENTON

December 26, 1928.

ADDITIONAL RULES AND REGULATIONS RELATING TO THE BUSINESS OF MAKING SMALL LOANS UNDER CHAPTER 49, LAWS OF 1914.

Small loan companies are prohibited from using or suffering to be used upon their stationery, records, forms, literature, or any advertising matter whatsoever, the words "bank," "banking," "industrial bank," "industrial banking," or any other kind of bank or banking, or any other words whatsoever that might in anywise give rise to any possible inference that such small loan company was in any sense a bank or was doing in anywise a banking business; also are prohibited from making any representation to the effect that such small loan company is under the supervision of this Department; these prohibitions extend not only to matters written or printed, but also to any communication whether by personal conference, telephone, or radio; and further that each and every small loan company shall forthwith forbid and take immediate steps to effectually repress any and all of its agents, employees, salesmen, sales agencies, sales distributors, fiscal agencies, or any person, firm or corporation engaged in selling or advertising its stock for sale, from using such or similar words or representations or any

Exhibit D. 17.

of them as an inducement to the sale of the stock of such small loan companies, or for any other purpose whatsoever, or in anywise in association or connection with such small loan companies, or their business, or their stock issues; that any violation of the rule or any part thereof will result in an immediate revocation of the license.

This Department reserves to itself the right to revoke such license irrespective of whether the above forbidden representations are made by authority of the licensee or not.

EXHIBIT D. 18.

Paper entitled, "Universal Finance Corporation Marketable Securities, June 30, 1928."

UNIVERSAL FINANCE CORPORATION
MARKETABLE SECURITIES,
JUNE 30, 1928

	Kind of Stock	Par Value	Number of Shares	Cost	Market Value
FOREIGN BONDS:					
United States of Brazil, 6½% external sinking fund bonds, due October 15, 1957,		$10,000.00		$ 9,850.00	$ 9,675.00
City of Vienna, 6% external loan sinking fund gold bond (interim certificate), due November 1, 1952,		10,000.00		9,137.50	8,925.00
Saxon State Mortgage Institution mortgage collateral sinking fund guaranteed gold bonds, 6½%, due December 1, 1946,		10,000.00		9,750.00†	9,625.00
Total,		$30,000.00		$ 28,737.50	$ 28,225.00
STOCKS OF DOMESTIC CORPORATIONS:					
Pledged as collateral to bank loan payable:					
American Exchange Irving Trust Co.,	Common	$100.00	10	$ 5,720.00*†	$ 4,532.50
The American Tobacco Company,	Common B	50.00	25	4,034.38	3,893.75
American Telephone and Telegraph Company,	Common	100.00	25	4,934.38*	4,443.23
The American Superpower Corporation,	Common A	No par	50	2,470.00	1,756.25
The Continental Insurance Company,	Common	25.00	50	4,691.25	4,006.25
Canadian Pacific Railway,	Common	100.00	25	5,482.50	5,131.25
Canada Dry Ginger Ale Inc.,	Common	No par	25	1,970.63	1,950.00
Deere & Company,	7% cum. preferred	100.00	25	3,155.00†	3,075.00
General Electric Company	Common	No par	25	4,221.88	3,812.50
Guaranty Trust Company of New York,	Common	100.00	10	7,485.00†	6,500.00
Hanover National Bank of the City of New York,	Common	100.00	10	15,050.00†	13,300.00

The Hanover Fire Insurance Company of New York,	Common	50.00	50	4,775.00†	3,900.00
Kennecott Copper Corporation,	Common	No par	25	2,342.50	2,253.13
The New York Central Railroad Company,	Common	100.00	25	4,709.38*	4,297.19
National Dairy Products Corporation,	Common	No par	50	4,410.00	3,893.75
The National Supply Company of Delaware,	Common	50.00	25	2,383.13†	2,275.00
New Orleans, Texas & Mexico Railway Company,	Common	100.00	25	3,605.00	3,525.00
Pullman, Inc.,		No par	25	2,333.13	2,087.50
Public Service Corporation of New Jersey,	Common	No par	50	3,177.50	2,768.75
The Peoples Gas, Light, and Coke Company,	Common	100.00	25	4,462.50	4,500.00
Southern Railway Company,	Common	100.00	50	8,031.25	7,537.50
Standard Oil Company of New Jersey,	Common	25.00	100	4,640.00	4,387.50
Standard Oil Company of Indiana,	Common	25.00	50	4,072.50	3,712.50
Standard Oil Company of California,	Common	No par	100	6,205.00	5,762.50
Sears, Roebuck and Company,	Common	No par	50	5,225.00	5,443.75
Standard Gas and Electric Company,	Common	No par	50	3,665.00	3,281.25
Westinghouse Electric & Manufacturing Company,	Common	50.00	50	4,976.88	4,737.50
Total,				$128,228.79	$116,763.55
Unpledged:					
Guaranty Trust Company of New York,	Common	$100.00‡	3-1/3	$ 2,495.00†	$ 2,166.67
The National City Bank of New York,	Common	100.00	10	9,200.00†	8,750.00
Total,				$ 11,695.00	$ 10,916.67
TOTAL MARKETABLE SECURITIES,				$168,661.29	$155,905.22

* Includes value of rights.

† Bid price (no closing price available).

‡ Subscribed for, but not received to June 30, 1928.

EXHIBIT A—SCHEDULE 1

EXHIBIT D. 19.

Certificate of Incorporation of Public Service Finance Corporation. Dated March 23, 1928; and Certificate of Amendment changing name to Universal Finance Corporation and increasing capital stock, dated June 22, 1928.

CERTIFICATE OF INCORPORATION
OF
PUBLIC SERVICE FINANCE CORPORATION

THIS IS TO CERTIFY that we, the undersigned, for the purpose of forming a corporation in pursuance of an act of the Legislature of the State of New Jersey, entitled, "An Act concerning corporations," (Revision of 1896) and the various acts amendatory thereof and supplemental thereto, do make, record and file this certificate.

FIRST: The name of the corporation is PUBLIC SERVICE FINANCE CORPORATION.

SECOND: The location of the principal office in this State is Room 804, National State Bank Building, #810 Broad Street, Newark, New Jersey.

The name of the agent therein and in charge thereof upon whom process against this corporation may be served is DALE D. HOLLENBAUGH.

THIRD: The objects for which this corporation is formed are:

The business of loaning money in sums of Three Hundred Dollars ($300.00) or less amounts pursuant to an act entitled "An Act to define, regulate and control the business of the making of loans or advancements of money in sums of three hundred (300) dollars or less in amount, and to regulate the assignment of wages when given as security for any such loan or advancement," being Chapter 49, P. L. 1914.

To buy or otherwise acquire, to hold, exchange, mortgage, pledge, sell, assign, transfer, lease or otherwise

Exhibit D. 19.

dispose of and to invest, trade in and deal in, any goods, wares, merchandise and property of every class and description including patents and patent rights, inventions or other improvements, trade-marks, shares or rights of corporations and real and personal property of any description, including bonds, mortgages, securities of any kind or description whatever and to act as the agent for the sale or purchase of any of the same or for any other purpose connected with any of the above described powers.

To make and enter into contracts for any lawful purposes with any individual, firm, association, corporation, private, public or municipal, body politic, and with the government of the United States, of any State, Territory, District, Possession or Dependency thereof, or of any foreign country.

To borrow or raise money without limit as to the amount and to issue bonds, debentures or obligations of the Company, from time to time, for any of the objects, or purposes of the Company, and to secure the same by mortgage or mortgages, or deed or deeds of trust, or pledge, or lien on any or all of the real and personal property, rights, privileges, and franchises of the Company wheresoever situated acquired and to be acquired, and to sell or otherwise dispose of any or all of the same, all in such manner and upon such terms as the Board of Directors may deem proper and as may be permitted by law.

To do any or all things herein set forth as objects, purposes, powers or otherwise to the same extent and as fully as natural persons might or could do, as principals, agents, contractors, or otherwise.

To conduct its business in all its branches, to have hold, own, mortgage, purchase, lease, sell and convey real property both within and outside of the State of New Jersey, and in all other States and territories and in all foreign countries and especially in the State of New Jersey.

FOURTH: The total authorized capital stock of this corporation is 30,000 shares, divided into 25,000 shares

Exhibit D. 19.

of preferred stock of the par value of $10.00 each, and 5,000 shares of common stock of no par value.

The holders of the preferred stock shall be entitled to receive, when and as declared, from the surplus or net profits of the corporation, yearly dividends at the rate of six per centum per annum and no more, payable quarterly on dates to be fixed by the By-Laws. The dividends on the preferred stock shall be cumulative and shall be payable before any dividend on the common stock shall be paid or set apart; so that if, in any year, dividends amounting to six per cent shall not have been paid thereon the deficiency shall be payable before any dividends shall be paid upon or set apart for the common stock.

Whenever all cumulative dividends on preferred stock for all previous years shall have been declared and shall have become payable, and the accrued quarterly instalments for the current year shall have been declared and the Company shall have paid such cumulative dividends for previous years and such accrued quarterly instalments, or shall have set aside from its surplus or net profits a sum sufficient for the payment thereof, the Board of Directors may, out of any remaining surplus or net profits, declare dividends, which dividends shall be payable on and divided equally between the two classes of stock so that after the payment of all cumulative dividends at the rate of six per centum per annum on the preferred stock, the balance of dividends, if any, which may be declared, shall be divided equally between the preferred and common stocks pro rata to the number of shares of each class of stock outstanding.

In the event of any liquidation or dissolution or winding up (whether voluntary or involuntary) of the corporation the holders of the preferred stock shall be entitled to be paid in full, both the par amount of their shares and the unpaid dividends accrued thereon, before any amount shall be paid to the holders of the common stock; and after the payment to the holders of the preferred stock of its par

Exhibit D. 19.

value and the unpaid accrued dividends thereon, the remaining assets and funds shall be divided and paid to the holders of the common stock according to their respective shares.

The holders of the preferred stock shall have no voting rights whatever except in the case that dividends on the preferred stock shall not have been paid for a period of two years, in which case the holders of preferred stock shall have the right to vote at any special or annual meeting of the stockholders.

FIFTH: The names and post-office addresses of the incorporators and the number of shares subscribed by each are as follows:

NAME	ADDRESS	NUMBER OF SHARES	
		Pref.	Com.
Dale D. Hollenbaugh	Roselle, New Jersey	35	35
Dewi T. Evans	Trenton, New Jersey	35	35
Frank R. Tappan	Orange, New Jersey	35	35

The amount of capital stock with which the Company will begin business is $1,050.00.

The period of existence of this corporation is unlimited.

IN WITNESS WHEREOF we have hereunto set our hands and seals this 23rd day of March, Nineteen Hundred and Twenty-Eight.

Dale D. Hollenbaugh (L. S.)
Dewi T. Evans (L. S.)
Frank R. Tappan (L. S.)

In the presence of:
Conover English

Exhibit D. 19.

STATE OF NEW JERSEY,
COUNTY OF ESSEX. } *ss.*

BE IT REMEMBERED, That on this 23rd day of March, in the year of our Lord, One Thousand, Nine Hundred and Twenty-Eight, before me, A Master in Chancery of New Jersey personally appeared DALE D. HOLLENBAUGH, DEWI T. EVANS and FRANK R. TAPPAN, who I am satisfied are the persons mentioned in and who executed the foregoing certificate and I having first made known to them and each of them the contents thereof, they did severally acknowledge that they signed, sealed and delivered the same as their voluntary act and deed.

Conover English,
Master in Chancery of New Jersey.

Endorsed:

"Received in the Clerk's Office of the County of Essex on the 23 day of March A. D. 1928 and Recorded in Book 123 of Inc. Buss Co's. for said County, page.....

John H. Scott
Clerk

Per H

FILED AND RECORDED MAR 24 1928

Joseph F. S. Fitzpatrick
Secretary of State."

Exhibit D. 19.

P-8355

CERTIFICATE OF AMENDMENT TO CERTIFICATE OF INCORPORATION

OF

PUBLIC SERVICE FINANCE CORPORATION

The location of the principal office in this State is at No. 810 Broad Street, in the City of Newark, County of Essex.

The name of the agent therein and in charge thereof, upon whom process against this corporation may be served, is Dale D. Hollenbaugh.

RESOLUTION OF DIRECTORS

The Board of Directors of the Public Service Finance Corporation, a corporation of New Jersey, on this 19th day of June, A. D. 1928, do hereby resolve and declare that it is advisable that due to the confusion of this Company with other Companies having similar name and the attendant inconvenience occasioned thereby that the name of this Company be changed to UNIVERSAL FINANCE CORPORATION and that the capital stock of the Company be increased and that the proper officers of the Company be authorized to execute any and all documents necessary to effect the change of the name of the corporation and the increase of its capital stock.

To change the name of the corporation to Universal Finance Corporation and for that purpose to amend Article One of the certificate of incorporation to read as follows:—

"FIRST: The name of the corporation is UNIVERSAL FINANCE CORPORATION."

To increase the capital stock of this Company from 30,000 shares, divided into 25,000 shares of preferred stock of the par value of $10.00 each, and 5,000 shares of common stock of no par value, and for that purpose to amend

Exhibit D. 19.

Article Four of the certificate of incorporation to read as follows:—

"FOURTH: The total authorized capital stock of this corporation is 90,000 shares, divided into 75,000 shares of preferred stock of the par value of $10.00 each, and 15,000 shares of common stock of no par value.";

and do hereby call a meeting of the stockholders, to be held at the Company's office, in the City of Newark, on the 22nd day of June, 1928, at two P. M., to take action upon the above resolution.

CERTIFICATE OF CHANGE

Public Service Finance Corporation, a corporation of New Jersey, does hereby certify that it has changed the name of said Company to Universal Finance Corporation, and has increased the capital stock of said Company from 30,000 shares, divided into 25,000 shares of preferred stock of the par value of $10.00 each, and 5,000 shares of common stock of no par value, to 90,000 shares, divided into 75,000 shares of preferred stock of the par value of $10.00 each, and 15,000 shares of common stock of no par value, said changes having been declared by resolution of the Board of Directors of said corporation to be advisable, and having been duly and regularly assented to by the vote of two-thirds in interest of each class of stockholders having voting powers, at a meeting duly called by the Board of Directors for that purpose; and the written assent of said stockholders is hereto appended.

In Witness Whereof, said corporation has caused this certificate to be signed by its President and Secretary, and its corporate seal to be hereto affixed, the 22nd day of June, 1928.

(SEAL)

Dale D. Hollenbaugh
President.

Frank R. Tappan
Secretary.

Exhibit D. 19.

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

BE IT REMEMBERED, that on this 22nd day of June, A. D. 1928, before me, the subscriber, a Notary Public of New Jersey, personally appeared FRANK R. TAPPAN, secretary of Public Service Finance Corporation, the corporation mentioned in and which executed the foregoing certificate, who, being by me duly sworn, on his oath says, he is such secretary and that the seal affixed to said certificate is the corporate seal of said corporation, the same being well known to him; that Dale D. Hollenbaugh is President of said corporation, and signed the certificate and affixed to said certificate the seal thereto, and delivered said certificate by authority of the Board of Directors and with the assent of at least two-thirds in interest of each class of the stockholders of said corporation having voting powers as and for his voluntary act and deed, and the voluntary act and deed of said corporation, in presence of deponent, who thereupon subscribed his name thereto as witness; and,

He further says that the assent hereto appended is signed by at least two-thirds in interest of each class of stockholders of said corporation having voting powers, either in person or by their several duly constituted attorneys in fact, thereunto duly authorized in writing.

Frank R. Tappan
Secretary

Subscribed and sworn to, this 22nd day
of June, 1928, before me.

Helen A. McCarthy
(SEAL) A Notary Public of N. J.

Exhibit D. 19.

STOCKHOLDERS' ASSENT TO CHANGE

We, the subscribers, being at least two-thirds in interest of each class of the stockholders of Public Service Finance Corporation having voting powers, having, at a meeting regularly called for the purpose, voted in favor on changing the name of said Company to Universal Finance Corporation and increasing the capital stock of said Company from 30,000 shares, divided into 25,000 shares of preferred stock of the par value of $10.00 each, and 5,000 shares of common stock of no par value, to 90,000 shares, divided into 75,000 shares of preferred stock of the par value of $10.00 each, and 15,000 shares of common stock of no par value, do now, pursuant to the statute, hereby give our written assent to said change.

WITNESS, our hands this 22nd day of June, A. D. 1928.

STOCKHOLDERS	No. of Shares
Dale D. Hollenbaugh	500
Frank R. Tappan	334
Richard J. Fitz Maurice	333
Dewi T. Evans	333
Belle M. Edwards	1333
Thomas P. Edwards	833

Endorsed:

"Received in the Clerk's Office of the County of Essex on the 29 day of June A. D. 1928 and Recorded in Book 126 of Inc. Buss Co's. for said County, Page....

John H. Scott
Clerk

Per Smith

FILED AND RECORDED JUL 3, 1928

Joseph F. S. Fitzpatrick
Secretary of State."

Exhibit D. 19.

STATE OF NEW JERSEY

(SEAL)

DEPARTMENT OF STATE

I, JOSEPH F. S. FITZPATRICK, Secretary of State of the State of New Jersey, Do HEREBY CERTIFY that the foregoing is a true copy of Certificate of Incorporation of PUBLIC SERVICE FINANCE CORPORATION and Certificate of Change of Name of said Corporation to UNIVERSAL FINANCE CORPORATION, as the same is taken from and compared with the originals Filed March 24, 1928 and July 3, 1928, respectively, and now remaining on file and of record in my office

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal at Trenton, this Fifteenth day of April, A. D. 1929.

Joseph F. S. Fitzpatrick,
Secretary of State.

(SEAL)

EXHIBIT D. 20.

Agreement between Public Service Finance Corporation and Alexander G. Edwards for sale of certain preferred stock of Public Service Finance Corporation, dated March 28, 1928.

THIS AGREEMENT entered into on this 28th day of March, 1928, between the Public Service Finance Corporation, a corporation of the State of New Jersey, hereinafter known as the "Company" and Alexander G. Edwards, his heirs and assigns, hereinafter known as the "Agent".

In consideration of the sum of One Dollar ($1.00) to each other in hand paid, receipt of which is hereby acknowledged, the parties hereto agree as follows:

FIRST: That the "Agent" Alexander G. Edwards, his heirs and assigns, be and he is, hereby exclusively authorized and empowered to offer for public subscription and sale, Twenty Five Thousand (25,000) shares of the Preferred Stock of the Public Service Finance Corporation.

SECOND. That the Public Service Finance Corporation will cause to be issued Twenty Five Thousand (25,000) shares of said Preferred Stock of the Public Service Finance Corporation, to the public through the "Agent", Alexander G. Edwards.

THIRD. That it is further agreed that the par value of the Preferred Stock is Ten Dollars ($10.00) per share, to be sold at the sum of Fourteen Dollars ($14.00) per share.

FOURTH. That it is further agreed that the Public Service Finance Corporation has the privilege of raising the price of said Preferred Stock at its discretion at any time, provided, however, that it meets with the approval of the "Agent."

Exhibit D. 20.

FIFTH. The "Agent" is to receive Twenty-five per cent (25%) of the amount for which the stock is sold; said commission to be paid out of the money first received for the sale of said stock, whether stock is paid for in full or on the partial payment plan.

SIXTH. It is further agreed that where the stock is sold on installment and the subscriber fails after the initial payment, or fails in the continuance of his installment payments, for the period of three or more months after same is due, then the obligation of the Public Service Finance Corporation to the subscriber ceases and the initial payment of the subscriber forfeited. The Public Service Finance Corporation to retain for its absolute use, its proportion of the money forfeited that it has in its possession.

SEVENTH. It is further agreed that this contract between the Public Service Finance Corporation and Alexander G. Edwards, his heirs and assigns, shall remain in full force until the Twenty-Five Thousand (25,000) shares are disposed of.

EIGHTH. That said stock sold to prospective purchasers is subject to the terms, conditions, provisions and restrictions set forth and provided in the Articles of Incorporation, By-laws and Certificates of the Public Service Finance Corporation, and that this "Company" is not responsible for any misrepresentation on the part of the "Agent."

NINTH. That it is further agreed that the "Agent" will make daily returns to the office of the Public Service Finance Corporation, of the sale of its stock and that this provision is mandatory upon the "Agent."

TENTH. It is further agreed that the Public Service Finance Corporation in case of installment subscription, send out proper notices before due date of payment, advising subscriber of the fact that installment payment is due, and that said "Company" shall make diligent effort to collect installment payment.

Exhibit D. 21.

ELEVENTH. All checks for the subscription of Preferred Stock shall be made payable to the Public Service Finance Corporation and all moneys collected by the "Agent" for the subscription of the Preferred Stock, either in case of cash sale or installment sale, be immediately turned over by said "Agent" to the "Company."

TWELFTH. The "Company" agrees to furnish the necessary contract blanks and stock certificates.

THIRTEENTH. No refunds shall be made to any subscriber, nor shall the "Company" repurchase any stock or release any subscriber for stock, without the written consent of the "Agent." It is within the province of the "Agent" to accept or reject stock subscriptions.

IN WITNESS WHEREOF, the "Company" and the "Agent" have caused these presents to be executed by their proper officers and their seal affixed thereto by the direction of their Board of Directors, the day and year above mentioned.

PUBLIC SERVICE FINANCE CORPORATION

By Dale D. Hollenbaugh
President.
Alexander G. Edwards

Attest: Frank R. Tappan
Secretary.

Witness: Dewi T. Evans
(SEAL) Public Service Finance Corporation.

EXHIBIT D. 21.

Sample of certificate of preferred stock of Universal Finance Corporation.

(This is the same as Exhibit D. 4 printed above.)

Exhibit D. 22 for Identification.

EXHIBIT D. 22 for Identification.

Letter "To Whom It May Concern" from New Jersey National Bank & Trust Co. of Newark, N. J., dated November 26, 1928.

Clarence G. Appleton
Chairman of the Board

John J. Stamler
President

NEW JERSEY NATIONAL BANK AND TRUST COMPANY
Newark, N. J.

Credit Department

November 26th, 1928.

To Whom It May Concern:

The Universal Finance Corporation have maintained an account with this institution since its inception. The company is engaged in the industrial banking business, making loans to individuals in amounts running up to $300. The business is supervised by the Department of Banking and Insurance.

We have granted the company liberal accommodation on a collateral basis and our relations have been most satisfactory. We believe the Officers are capable and merit our confidence.

Very truly yours,

Parker W. Silzer,
Ass't. Vice President.

All persons are informed that any statement on the part of this Bank or any of its Officers as to the responsibility or standing of any Person, Firm or Corporation, or as to the value of any Property, or Securities, is a mere Matter of Opinion, and given as such; and solely as a Matter of Courtesy, and for which No Responsibility, in any way, is to attach to this Bank or any of its Officers.

We act as executor, administrator, trustee, guardian etc., also as transfer agent and registrar of stocks and trustee for bond issues.

EXHIBIT D. 23.

Memorandum prepared by defendant, Dewi T. Evans and identified by him and also by defendant, Dale D. Hollenbaugh, as containing the figures which were presented to meeting of Board of Directors of Universal Finance Corporation held June 14, 1928.

Interest on bonds: 289.59

" " stocks: 900.00

" " loans: 300.00

record - Value of rights

June 22 — 2 1/2 American Exchange Irving Trust Co. 24.00 — 60.00

June 4 — 2 1/2 American T & T — 13.00 — 32.00

June 15 — 4 1/6 N Y Central — 6.00 — 25.00

May 18 — 3 1/3 Guaranty Trust Co. — 135 — 450.00 657.00

587.00 2.146.59

paid in surplus 4000.00

record June 20/28

90

2046.59

200.19

2.246.78

1756.00

140.000

5

8 | 7000.00

800.00

4 | 7.000

1.750

int - 2800.

profit 600.

loans 5150

ex D-23

Exhibit D. 24.

EXHIBIT D. 24.

Minutes of Meeting of Board of Directors of Universal Finance Corporation of December 5, 1928.

Minutes of Meeting of Board of Directors of Universal Finance Corporation was held December 5th, 1928 at 4:00 P. M. The President, D. D. Hollenbaugh, called the meeting to order and presided as Chairman of the Board.

Present:—

D. D. Hollenbaugh
D. T. Evans

The Minutes of the Board Meeting held on October 17th, last were read and approved and signed by the Chairman and Secretary.

After a full discussion, the following resolutions were moved and adopted by the unanimous vote of all present:—

"RESOLVED, that the quarterly dividend for the quarter ending December 31st, 1928 of one and one-half per cent (1½%) together with a participating dividend of one per cent (1%) be and same is hereby declared by the outstanding Preferred Stock—said dividend to be pro-rated upon said stock according to the date of the final payment of the subscription therefor, from the date of said final payment to December 31st, 1928—said dividend to be payable December 31st, 1928 and to be payable to Preferred Stockholders who appear of record at the close of business on December 20th, 1928, and that the Treasurer be and is hereby authorized and instructed to pay the same."

Further resolved, that the Universal Finance Corporation accept a note in the sum of $20,000 from the Financial Investment Corporation, in consideration of the exclusive contract for the sale of 20,000 shares of 6% Participating Preferred Stock and that the Financial Investment Cor-

poration be retained as sole fiscal agents for any future financing of the Corporation.

Further resolved, that the participating feature of the 6% Preferred stock be increased from 4% to 6%, effective as of January 1st 1929.

Further resolved, that the dividends be paid to stockholders of record, as of the twentieth of each month and that dividend checks be mailed on the last day of each calendar month.

There being no further business before the meeting, it was adjourned.

DEWI T. EVANS
Secretary.

D. D. HOLLENBAUGH
Chairman.

EXHIBIT D. 25 for Identification.

Photograph of Broad & Market Street identified by defendant Alexander G. Edwards.

Exhibit D. 26.

EXHIBIT D. 26.

Certificate of Incorporation of Financial Investment Corporation, dated June 8, 1928.

CERTIFICATE OF INCORPORATION
of
FINANCIAL INVESTMENT CORPORATION.

THIS IS TO CERTIFY that we, ALEXANDER G. EDWARDS, SUE CHAIKIN and MORRIS D. BARR, do hereby associate ourselves into a corporation, under and by virtue of the provisions of an act of the legislature of the State of New Jersey, entitled "An act concerning corporations (Revision of 1896)," and the several supplements thereto and acts amendatory thereof, and do severally agree to take the number of shares of capital stock set opposite our respective names.

1. The name of the corporation is FINANCIAL INVESTMENT CORPORATION.

2.—The location of the principal office in this state is No. 810 Broad St., Newark, N. J.

The name of the agent therein and in charge thereof, upon whom process against this corporation may be served, is ALEXANDER G. EDWARDS.

3.—The objects for which this corporation is formed are:

(a) To purchase by subscription or otherwise, and to hold, own, sell, exchange, or otherwise dispose of, and to deal in and with bonds, debentures, stocks, obligations and securities issued by any public or private company, government or municipality, or otherwise, and to issue in exchange for all such shares, bonds and stocks, the shares, bonds, stock and other evidences of indebtedness of the company.

(b) The company shall have power to hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of the

shares of the capital stock, debentures, bonds and other evidence of obligations of any other corporation, and to exercise all the powers of a stockholder in any such other corporation.

(c) To purchase or otherwise acquire, the property rights, business, franchises and assets of every kind, and either wholly or in part to undertake the liabilities of any person, association or corporation, and to take over any business by purchase of the assets of said business either wholly or in part, by acquiring the capital stock or any part thereof, or to pay for the same in cash or otherwise; to hold, maintain and operate or to dispose of the whole or any part of the business, rights and property so acquired, and to carry on the whole or any part of any business so acquired, and to exercise all powers advantageous or necessary to the successful conduct of such business.

(d) To undertake any business commonly carried on by capitalists, promoters, underwriters, contractors, merchants and agents, and in the process of said business to draw negotiable instruments, and to accept, acquire and sell securities including debentures, bonds and notes. To purchase and otherwise acquire, sell and otherwise dispose of, deal in and with real and personel property of all kinds.

(e) By purchase or otherwise, to acquire, take, hold, own, maintain, develop, sell, convey, mortgage, exchange or otherwise deal in and with real estate or any interest and rights therein, as well as water rights, and to construct, maintain and improve all buildings, lands or works thereon, or any water rights appurtenant to any lands so acquired.

(f) To examine into the accounts and physical and financial condition of any business, reorganize business ventures by making examinations into their accounts and physical and financial condition and reporting the same to those interested therein, and to systematize and direct

Exhibit D. 26.

or give direction for the systematizing and management of such business, and to do all other such business as is usually done by an auditing company.

(g) To keep, examine, audit, analyze, report upon and certify to the books, accounts and records of individuals, partnerships and other corporations, and install systems of accounting, and appraise real estate and other property, and the transaction of a general auditing, accounting and appraisal business.

(h) To lend money and negotiate loans; to draw, accept, endorse, discount, buy, sell, and deliver bills of exchange, promissory notes, bonds, debentures, coupons and other negotiable instruments and securities; to issue on commission, subscribe for, take acquire, and hold, sell, exchange, and deal in, shares, stocks, bonds obligations, securities of any government or authority or company; to form, promote, subsidize and assist companies, syndicates, and partnerships of all kinds; to give any guarantee for the payment of money or the performance of any obligations or undertaking; to undertake and execute any trusts; to acquire, improve, manage, work, develop, exercise all rights in respect of, lease, mortgage, sell, dispose of, turn to account and otherwise deal with property of all kinds, and in particular relating to lands, buildings, concessions, patents, business concerns, and undertakings; to enter into any arrangements with any authorities, municipal, local or otherwise that may seem conducive to the company's objects or any of them and to obtain from any such government or authority any rights privileges, and concessions which the company may think it desirable to obtain, and to carry out, exercise and comply with any such arrangements, rights, privileges and concessions. Generally to carry on and undertake any business, undertaking, transaction, of capitalists, promoters, financiers, concessionaries, contractors for public and other works, merchandise and any other business which may seem to the company capable of being con-

veniently carried on in connection with the above or calculated, directly or indirectly, to enhance the value of or render profitable, any of the company's property or rights.

(i) To examine into the merits of any enterprise or properties as offers opportunity for investments; to bring the same to the attention of capitalists; to represent investors and bring them into contact with investments; to act as fiscal agents or trustees for individuals, firms or corporations; to represent corporations as their financial or business agent or as registrar of their stocks or bonds; to deal in, take the title to, or acquire, either absolutely or as trustee, and to transfer, hold and own the stocks or bonds or other securities of corporations, and to do and perform all such other lawful acts and things as are necessary or proper to the exercise of the power and purposes hereinbefore enumerated, or such as are incidental thereto, including the power to report upon the condition and value of properties and to render accountings as to the financial or physical condition and affairs of individuals, firms or corporations, and to employ for that purpose skilled experts and accountants.

(j) To purchase, hold, sell, improve and lease real estate, and mortgage and encumber the same, and to erect, manage, care for and maintain, extend and alter buildings thereon.

(k) To act as agents, trustees, receivers, liquidators, managers, brokers or in any other station of trust or confidence in respect to the establishment and promotion of corporations or associations; to acquire, prosecute and execute undertakings, business, works, and enterprises of any description. To guarantee and investigate the statements by the owners as to the standing, profits, assets and conduct of undertakings, businesses, works and enterprises of every description in the United States of America or elsewhere, and to acquire or dispose of and deal in shares and interests in such companies and associations and in

Exhibit D. 26.

any other companies or associations or undertakings thereof. Generally to undertake and transact any of the businesses of merchants, capitalists, financial agents, trustees or promoters which seems conducive to any of the objects of the company. To do all or any of the above things in any part of the world, and either as principals, agents, trustees, contractors, or otherwise and either as alone or in conjunction with others and either by or through sub-contractors, agents, trustees, contractors or otherwise. To draw, accept, endorse, discount, execute and issue bills of exchange and promissory notes to be used in the business of the company.

(l) To manufacture, purchase or otherwise, acquire, hold, own, mortgage, sell, assign and transfer, invest, trade deal in and deal with goods, ware and merchandise, and property necessary for the business of the company.

(m) To acquire, hold, use, sell, assign, lease, mortgage or otherwise dispose of letters patent of the United States or of any foreign country, patents, patent rights, licenses and privileges, inventions, improvements and processes, trademarks and trade names, or pending applications therefore, relating to or useful in connection with any business of the corporation.

(n) So far as may be permitted by the act under which this company is incorporated, the corporation shall have power to purchase, receive, hold, own, sell, assign, transfer, mortgage, pledge and otherwise acquire or dispose of, bonds, mortgages, debentures, notes, shares of capital stock and other securities, obligations, contracts, and evidences of indebtedness of any company, corporation or association, or of any government, state, municipality or body politic; to receive, collect and dispose of interest, dividends and income upon, of and from any of the bonds, mortgages, debentures, notes, shares of capital stock, securities, obligations, contracts, evidences of indebtedness and other property held or owned by it, and to exercise in respect of all such bonds, mortgages, debentures, notes,

shares of capital stock, securities, obligations, contracts, evidences of indebtedness and other property, and any and all the rights, powers and privileges of individual ownership thereof, including the right to vote thereon.

(o) To acquire the good will, rights, property and assets of all kinds, and to undertake the whole or any part of the liabilities of any person, firm, association or corporation engaged in a similar business, and to pay for the same in cash, stock, bonds, debentures or other securities of this corporation, or otherwise.

(p) To enter into, make, perform and carry out contracts of every sort and kind, with any person, firm, association, corporation private, public or municipal, or body politic, and with the government of the United States, or any State, territory, colony or dependency thereof, or any foreign government.

(q) To borrow money, to make and issue promissory notes, bills of exchange, bonds, debentures and obligations and evidences of indebtedness of all kinds, whether secured by mortgage, pledge or otherwise, without limit as to amount, and to secure the same by mortgage, pledge or otherwise.

(r) To carry on any other business (whether manufacturing or otherwise,) which may, in the discretion of the directors, seem capable of being conveniently carried on in connection with the above or calculated directly or indirectly to enhance the value of the company's property or rights.

(s) To have one or more offices, to carry on all or any part of its operations and business, and unlimitedly and without restriction to hold, purchase, mortgage, lease and convey real and personal property and to conduct its business in any state or territory of the United States, and in any foreign country or place, but subject always to the laws thereof.

(t) To do all and everything necessary, suitable, convenient or proper for the accomplishment of any of the

Exhibit D. 26.

purposes, or the attainment of any one or more of the objects herein enumerated, or incidental to the powers herein named, or which shall at any time appear conductive or expedient for the protection or benefit of the corporation, either as holders of or interested in any property or otherwise; with all the powers now or hereafter conferred by the laws of New Jersey upon corporations under the act hereinbefore referred to.

4. The total authorized capital stock of this corporation shall consist of one thousand (1,000) shares of common stock, without nominal or par value. All or any part of said shares of common stock, without nominal or par value, may be issued by the corporation from time to time and for such consideration as may be determined upon and fixed by the Board of Directors, as provided by law.

5. The names and post-office addresses of the incorporators and the number of shares subscribed for by each, the aggregate of which One Thousand ($1,000.) Dollars is the amount of capital stock with which this company will commence business, are as follows:

Name	Post-Office Address	No. of Shares
Alexander G. Edwards	810 Broad St., Newark, N. J.	8 shares
Sue Chaikin	972 Broad St., Newark, N. J.	1 "
Morris D. Barr	972 Broad St., Newark, N. J.	1 "

6. The period of existence of this corporation is perpetual.

In Witness Whereof, we have hereunto set our hands and seals this 8th day of June A. D. 1928.

Alexander G. Edwards (L. S.)
Sue Chaikin (L. S.)
Morris D. Barr (L. S.)

Signed, Sealed and Delivered in the presence of

Harold Herman

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STATE OF NEW JERSEY,
COUNTY OF ESSEX. } *ss.*

BE IT REMEMBERED, That on this 8th day of June A. D., 1928, before me, AN ATTORNEY AT LAW OF NEW JERSEY, personally appeared ALEXANDER G. EDWARDS, SUE CHAIKIN, and MORRIS D. BARR, who, I am satisfied are the persons named in and who executed the foregoing certificate, and I having first made known to them the contents thereof, they did each acknowledge that they signed, sealed and delivered the same as their voluntary act and deed, for the uses and purposes therein expressed.

Harold Herman
AN ATTORNEY AT LAW OF NEW JERSEY.

ENDORSED:

"Received in the clerk's office of the County of Essex, on the 9 day of June A. D., 1928 and recorded in Book 125 of Inc. Buss. Co's. for said County, page——

John H. Scott
Clerk
Per H."

"FILED AND RECORDED

Jun 11 1928
Joseph F. S. Fitzpatrick
Secretary of State."

Exhibit D. 26.

STATE OF NEW JERSEY

(SEAL)

Department of State.

I, JOSEPH F. S. FITZPATRICK, Secretary of State of the State of New Jersey DO HEREBY CERTIFY that the foregoing is a true copy of the Certificate of Incorporation of FINANCIAL INVESTMENT CORPORATION, and the endorsements thereon, as the same is taken from and compared with the original filed in my office on the Eleventh day of June, A. D. 1928, and now remaining on file and of record therein.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal at Trenton, this Eleventh day of June, A. D. 1928.

Joseph F S Fitzpatrick

(SEAL) *Secretary of State.*

Exhibit D. 27.

EXHIBIT D. 27.

Subscription contract of Alexander Reid, dated November 20, 1928.

No. Shares.....

SUBSCRIPTION CONTRACT

500

Phone Mulberry (1313-1314-1315-1316)

FINANCIAL INVESTMENT CORPORATION
605 BROAD STREET, NEWARK, N. J.

Gentlemen:

You are hereby authorized to purchase for me *100.* shares of the Preferred Stock of the UNIVERSAL FINANCE CORP., a New Jersey Corporation, at Fifteen Dollars ($15.00) per share.

I understand that the par value of such stock is Ten Dollars ($10.00) per share; that it is entitled to a preferred cumulative dividend at the rate of 6% per share per year (from date of issue) before any dividend on common stock; and that after payment of said dividend at the rate of 6% per share for each fiscal year to the holders of Preferred Stock any further amount declared in dividends for said year shall be divided among the holders of Preferred and Common Stock, share and share alike; that this stock is non-voting except in the event the preferred dividend thereon is not paid for two years, and except as otherwise provided by law.

I, the undersigned, hereby subscribe for.....shares of the Preferred Stock of the UNIVERSAL FINANCE CORP., a New Jersey Corporation, at Fifteen Dollars ($15.00) per share payable Five Dollars ($5.00) on each and every share upon the signing of this agreement and subsequent thereto the sum of.....monthly at the office of the UNIVERSAL FINANCE CORP., beginning.....10, 19...., without notice until the total sum of Dollars (*$1,500.*) has been paid, and upon my failure to make installment payments for a period of three or more months after last payment I agree to a complete cancellation of this contract and the costs to liquidate same and the corporation shall not be obligated to issue any shares other than for the monthly payments paid in.

This agreement shall be made in duplicate and a copy left with the subscriber.

Received *$1,500.* Full / First } Payment.

FINANCIAL INVESTMENT CORPORATION
By *W. F. Cawthorne*
Representative.

Date *Nov 20th 1928.*
Signature *Alexander Reid*
Address *15 Margaret St*
City and State *Bayonne N. J.*

Make checks payable to Financial Investment Corporation.

Alexander A Reid or Mary E. Reid
Ack 1500.00 11/20/28 AG

Exhibit D. 28.

EXHIBIT D. 28.

Subscription contract with Alexander Reid, dated December 11, 1928.

No. Shares.....

SPECIAL SUBSCRIPTION CONTRACT

792
Expires at Midnight
December 12, 1928
Phone Mulberry (1313-1314-1315-1316)

FINANCIAL INVESTMENT CORPORATION
605 BROAD STREET, NEWARK, N. J.

Gentlemen:

You are hereby authorized to purchase for me *33⅓* shares of the Preferred Stock of the UNIVERSAL FINANCE CORP., a New Jersey Corporation, at Fifteen Dollars ($15.00) per share.

I understand that the par value of such stock is Ten Dollars ($10.00) per share; that it is entitled to a preferred cumulative dividend at the rate of 6% per share per year (from date of issue) before any dividend on common stock; and that after payment of said dividend at the rate of 6% per share for each fiscal year to the holders of Preferred Stock any further amount declared in dividends for said year shall be divided among the holders of Preferred and Common Stock, share and share alike; that this stock is non-voting except in the event the preferred dividend thereon is not paid for two years, and except as otherwise provided by law.

I, the undersigned, hereby subscribe for.....shares of the Preferred Stock of the UNIVERSAL FINANCE CORP. a New Jersey Corporation, at Fifteen Dollars ($15.00) per share payable Five Dollars ($5.00) on each and every share upon the signing of this agreement and subsequent thereto the sum of.....monthly at the office of the UNIVERSAL FINANCE CORP., beginning.....10, 19...., without notice until the total sum of Dollars ($*5,010.*) has been paid, and upon my failure to make installment payments for a period of three or more months after last payment I agree to a complete cancellation of this contract and the costs to liquidate same and the corporation shall not be obligated to issue any shares other than for the monthly payments paid in.

This agreement shall be made in duplicate and a copy left with the subscriber.

Received *$10.00 also* } Full / First } Payment.
Certificate Mechanics Trust Co Bayonne
5000 Mtge Certificate

FINANCIAL INVESTMENT CORPORATION

By *W. F. Cawthorne*
Representative.

Date *Dec. 11th 1928*
Signature *Alexander Reid*
Address *15 Margaret St.*
City and State *Bayonne N. J.*

Alexander Reid or Mary E Reid.

Make checks payable to Financial Investment Corporation.

Ack KRG 12/10/28

EXHIBIT D. 29.

Lease from Market and Broad Realty Corporation to Public Service Finance Corporation, dated June 1, 1928, for third floor of building on southwest corner of Broad and Market Streets, Newark, for the term of 7 years and 11 months, commencing June 1, 1928.

THIS IS TO CERTIFY that THE TRUST COMPANY OF ORANGE, has this day received from PUBLIC SERVICE FINANCE CORP., the tenant in a certain indenture of lease dated June 1st, 1928 between Market & Broad Realty Corporation as the landlord, and the said Public Service Finance Corp., as the tenant, a copy of which lease is hereto annexed, the sum of Fifteen Hundred Dollars ($1500.00) as a deposit made by said tenant with the said The Trust Company of Orange, pursuant to the requirements of paragraph 31 of said lease, which money is deposited in lieu of a bond mentioned in said paragraph 31 and the said The Trust Company of Orange agrees to hold and apply the said deposit pursuant to the terms and conditions of said paragraph 31 of said lease.

All interest paid by said The Trust Company of Orange upon said deposit shall be paid to the Public Service Finance Corp.

Said Deposit is to be entered on the books of said The Trust Company of Orange in both names of the said Market and Broad Realty Corporation and Public Service Finance Corp., and shall not be subject to withdrawal by either of said parties for the full term of said lease, except upon the sooner termination of said lease upon breach or breaches thereof by the tenant, and in such event only according to law and the terms of said lease. dated June 18, 1928.

THE TRUST COMPANY OF ORANGE
By Moses Roth President.

Attest: F. T. Cramer
Acting Secretary.

Exhibit D. 29.

MARKET & BROAD REALTY CORPORATION
By Thomas P. Argyris President.

Attest: George P. Argyris
Secretary.

PUBLIC SERVICE FINANCE CORP.
By D. D. Hollenbaugh President.

Attest: Frank R. Tappan
Secretary.

(SEAL)

THIS INDENTURE made the first day of June, 1928, between MARKET & BROAD REALTY CORPORATION, a corporation of New Jersey, hereinafter called the lessor, and PUBLIC SERVICE FINANCE CORP., a corporation of New Jersey, hereinafter called the lessee.

WITNESSETH: That in consideration of the following covenants, agreements, limitations and conditions, entered into by the parties hereto, for them, their successors and assigns, the said lessor does hereby lease unto the said lessee, the third floor of the building situate on the southwest corner of Broad and Market Streets, in the City of Newark, in the County of Essex and State of New Jersey, for a term of seven years and eleven months, commencing on the first day of June, 1928, and ending on the thirtieth day of April, 1936.

Said premises shall be used only as business offices, and for no other business, trade or purpose, (except as hereinafter provided) unless written consent to use and occupy for other purposes is first obtained from the lessor.

Said letting shall be for the rent of Three Thousand Dollars for the first year of said term from June 1, 1928 to June 1, 1929; then Thirty-six Hundred Dollars for the second year of said term from June 1, 1929 to June 1, 1930 and Four Thousand Dollars per annum from June 1, 1930

Exhibit D. 29.

to June 1, 1933, then Forty-five Hundred Dollars per annum from June 1, 1933 to April 30, 1936.

Provided always and the lessee hereby covenants and agrees as follows:

1. To pay the rent punctually in equal monthly installments, in advance on the first secular day of each month during said term, as follows: $250 per month from June 1, 1928 to June 1, 1929; $300 per month from June 1, 1929 to June 1, 1930; $333.33 1/3 per month from June 1, 1930 to June 1, 1933; $375.00 per month from June 1, 1933 to end of said term, to the lessor at such places as the lessor may from time to time designate and to pay all water charges for water consumed by the lessee, and to promptly install and connect a water meter for said demised premises, if required by the lessor, at any time during said term.

2. At the lessee's own cost to put and keep the said premises in good condition and safe and proper repair and in tenantable order during the term, and to make all repairs to the interior of said demised premises.

3. To promptly comply with all laws and ordinances of and every notice requirement order, regulation and recommendation of any and all Federal, State, County, Municipal and State authority, and the Board of Fire Underwriters, and any insurance organizations or associations.

4. Not to use or occupy the premises for any purpose other than above set forth.

5. To permit the lessor or lessor's agents to enter and examine the condition of the premises and to make repairs and to make measurements thereof, during times reasonable in accordance with the business of the party of the second part.

6. Not to make any alterations in said premises, nor assign, mortgage, or pledge this lease or sub-let or underlet the whole or any part of the premises without the lessor's written consent, except that the lessee is hereby

given permission to sublet said premises, provided such subletting shall not permit said demised premises nor any part thereof to be used for any business or purpose that may conflict with the business, use or purpose of any other tenant of the lessor occupying any part of the building in which the demised premises are part.

7. Not to leave the premises unoccupied or vacant during the term.

8. Not to suffer any act of commission or omission on the premises, which will increase the rate of insurance or cause the cancellation of any policy of insurance of any nature thereon.

9. All signs, awnings, projections, advertising devices or notices on any part of the premises, shall not be placed without the lessor's consent and direction, and it is understood and agreed that if any sign is placed upon said premises or advertising, that said sign shall not be erected on any part of the roof and shall rest two feet lower than the stone coping on the wall surrounding the top of said building, and shall conform with the Rules, Ordinances and Statutes of the State of New Jersey, and the City of Newark.

RIDER TO PARAGRAPH 9.

Permission is hereby given to the lessee to place on the southerly side of the entrance on Broad Street, leading to the demised premises, and on the window of the northerly door of said entrance, advertising signs, and also the right to advertise on the windows of the demised premises, and to erect advertising signs projecting outward from the building contiguous with the levels of the demised premises, provided that such signs and advertising matter shall not advertise any product, business or matter other than the name and business of the lessor or of any sub-tenant of the lessor, nor advertise any product or business or purpose of like character or in conflict with the business of any other tenant of the lessor or of the United Cigar Stores Company of America.

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10. Not to call on the lessor for any disbursement or outlay during the term, and at the expiration or determination of the term to peaceably surrender the premises with all improvements and additions thereto in good condition without notice of any description, all notice to quit or vacate, being hereby expressly waived, any law, usage or custom to the contrary notwithstanding.

RIDER TO PARAGRAPH 10.

It is agreed between the lessor and the lessee that the lessee, at or prior to the time of the expiration or other termination of this lease, may remove all partititions and trade fixtures installed by the lessee during its occupation of said premises, provided however, that the lessee upon such removal, shall become and remain responsible to the lessor for any damage to said premises, caused by such removal.

11. The lessor shall not be responsible for any defect or change of condition in the premises, nor for any damage to the same, nor to any person, nor to the goods or things contained therein, by reason of any matter or things; and the lessee will indemnify and save harmless the lessor of and from all fines, suits, proceedings, claims, demands, and actions of any kind or nature of anyone whomsoever, arising or growing out of or in any wise connected with the occupation or use of said premises and the sidewalks, and by reason of any breach, violation, or non-performance of any covenants or condition hereof on the part of the lessee.

12. Not to carry on nor permit to be carried on any sales at auction in the demised premises.

13. In case the lessee fails or omits to perform any of the covenants or conditions herein contained the term of this lease shall expire fifteen days after notice in writing of any such failure or omission shall be sent by the lessor to the lessee by registered mail, addressed to the demised premises and this lease shall cease and come to an end

Exhibit D. 29.

in the same manner and to the same effect as if it were the date originally fixed herein for the expiration of the term.

14. That if default be made in any of the covenants and or agreements herein contained, in addition to and not in limitation of any other right or remedy, the lessor shall have the right to re-enter said premises and the same to have again, repossess and enjoy.

The said tenant hereby expressly waives the service of any notice in writing or intention to re-enter.

15. In the event that the term of this lease shall end before the expiration date originally fixed as herein provided, because of any failure or omission on the part of the lessee to perform any of the covenants or conditions hereof, or if the lessor enters or re-enters upon the premises and repossesses the same, or if the lessee is dispossessed or removed therefrom by summary proceedings or otherwise, the lessor, at the lessor's option, may repair, alter and/or change the character of demised premises as it may deem fit, and/or may let the premises or any part thereof as the agent of the lessee or othewise, and receive the rent therefor, applying the same first to the payment of such expense as the lessor may be put to in entering, dispossessing, letting, repairing, altering and/or changing the character of demised premises and then to the payment of the rent and the fulfillment of the lessee's covenants hereunder; and the lessee agrees to pay and shall be liable for amounts equal to the several installments of rent as they would under the terms of this lease, become due if no default had occurred, whether the demised premises be re-let or remain vacant in whole or in part or for a period of less than the remainder of the term, or for the whole thereof, but the lessee shall be entitled to be credited at the end of each month with any net amounts actually received by the lessor during such month for the use or occupancy of the demised premises, or any part thereof, provided, however, that all sums paid

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and liabilities incurred by the lessor for any of the purposes aforesaid (which the lessee also agrees to pay and shall be liable for) shall have been first paid in full to the lessor, either directly by the lessee or out of moneys actually received for renting said demised premises after the lessor shall have received undisputed possession thereof, and the maintenance of any action or proceeding to recover possession of the premises or any installment or installments of rent or any other moneys that may be due or become due from the lessee to the lessor shall not preclude the lessor from thereafter instituting and maintaining subsequent actions or proceedings for the recovery or possession of the premises or of any subsequent installment or installments of rent or any other moneys that may be due or become due from the lessee to the lessor. A waiver by the lessor of any breach or breaches by the lessee of any one of more of the covenants or conditions hereof shall not bar forfeiture or any other rights or remedies of the lessor for any subsequent breach of any such or other covenants and conditions. Any entry or reentry by the lessor, whether had or taken under what are known generally as summary proceedings, or otherwise, shall not be deemed to absolve or discharge lessee from liability hereunder. The lessor may at the lessor's option (In addition to and not in exclusion of any other right or remedy given or granted hereunder) enforce any provisions of law of the State in which the demised premises are situated, governing the relation of landlord and tenant; with the same effect as though the right to enforce such provisions were herein specifically set forth. And if the lessor shall be at any charge or shall make any expenditure for which the lessee is responsible, or which the lessee shall make, or if the lessee shall omit to make any payment other than rent which the lessor is obliged to make hereunder, then the amount thereof may at the lessor's election be added to and be deemed a part of any installment of rent, then due or thereafter falling due.

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16. No space attached or appurtenant to or connected with the demised premises lying in, upon or under any public highway or other public or quasi-public property is included in this demise and the lessor shall not be liable for nor shall this lease be affected by any interference with or taking of the whole or any part thereof, nor shall there be any abatement of rent due to any such taking or interference. The lessor hereby covenants that the lessee upon paying the rent as herein reserved and performing all the covenants and agreements herein contained on the part of the lessee, shall and pay peaceably and quietly have, hold and enjoy the premises hereby demised without hindrance or molestation by the said lessor, its successors and assigns.

17. The lessee agrees that in case the premises hereby leased shall be damaged by fire at any time during said term, the lessee shall give immediate notice thereof to the lessor, who shall thereupon cause the same to be repaired, and a proportionate reduction of rent shall be allowed the lessee for the time so occupied in repairing such part or parts of said premises as may be rendered untenantable and incapable of use and occupancy; but in case the premises hereby demised, or the building in which demised premises are located shall be so damaged by fire or otherwise that the lessor shall decide to rebuild, the term shall cease and the accrued rent shall be paid up to the time of the damage or such termination. No compensation or claim will be allowed by the lessor arising from the repairing or alteration of any portion of the building or of the demised premises.

18. In the event that the premises demised or any part thereof are taken or condemned for public or quasi-public use, this lease, shall, as to the part so taken, terminate as of the date title shall vest in the condemnor, and rent reserved shall abate proportionately as to the part so taken or shall cease if the entire premises demised be so taken.

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19. This lease and all of the terms, covenants and conditions hereof are in all respects subject and subordinate to the rights and claims of the State, County and City in which the demised premises be situate, as well as to the rights of the owner of the land on which the building containing the demised premises are situate.

20. The lessee agrees to abide by any reasonable rules or regulations which the lessor shall make for the government and management of the building and of the demised premises.

21. This lease shall be subject and subordinate at all times to the lien of any mortgages now or hereafter placed on the land and buildings of which demised premises form a part. The lessee covenants and agrees to execute and deliver upon demand such further instrument or instruments subordinating this lease to the lien of any such mortgage or mortgages as shall be desired by any mortgagee or proposed mortgagee. The lessee hereby appoints the lessor the attorney in-fact of the lessee irrevocable, to execute and deliver any such instrument or instruments for and in the name of the lessee.

22. If at any time, proceedings in bankruptcy shall be instituted by or against the lessor, or if the lessee shall compound the lessee's debts or assign over the lessee's estate or effects for payment thereof, or if any execution shall issue against the lessee, or any of the lessee's effects whatsoever, or if a receiver or trustee shall be appointed of the lessee's property, or if this lease shall by operation of law, devolve upon or pass to any person or persons other than the said lessee personally, then and in each of said cases this lease shall cease and come to an end and three days after notice shall be sent by mail by the lessor to the lessee addressed to the premises. Upon such termination all future installments of rent unpaid, and all other sums due and payable or to become due and payable by the lessee shall at once become due and payable. Acceptance by the lessor of any sums either for

Exhibit D. 29.

rent or use and occupancy of the whole or any part of the demised premises from any one other than the lessee personally, shall not be nor be deemed to be a waiver of any of the lessor's rights and remedies hereunder.

23. Service of any notice required or agreed to be given hereunder shall be sufficient if sent by registered mail addressed, if given by the lessor, to the lessee at the demised premises, or if given by the lessee, addressed to the place where the rent is payable hereunder.

24. In addition to and not in limitation of any other rights and remedies which the lessor shall or may have, in the event that the insurance premium rate upon the building or any interest therein or any contents thereof shall be increased by reason of any act of omission or commission on the part of the lessee or by reason of the nature of the use of the premises, the lessee agrees, if required by the lessor, to pay the amounts of such increase as the same shall from time to time be demanded by the lessor, in addition to and as part of the rent payable hereunder.

25. Any material alterations or improvements hereinafter consented to by the lessor shall be planned by the architect of the lessee and shall be approved by and be satisfactory to the lessor and lessor's architect.

26. The lessee shall pay the first month's rent, to grow due under this lease, upon signing of this lease.

27. The lessee further covenants and agrees that it will not sell or dispense or permit to be dispensed or sold any intoxicating vinous or malt liquors on any part of said premises, or suffer or permit said premises to be used for unlawful or immoral purposes whatsoever, under penalty of forfeiture and damages.

28. This lease is subject to and subordinate to the lease of the party of the first part with the United Cigar Stores, dated April 28, 1926, and the various conditions, agreements and covenants contained in said lease are made

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a part of this lease, as if the same were in detail enumerated herein, insofar as it relates to the business of the party of the second part.

29. It is further understood and agreed that this lease and the renting of the aforesaid premises was not obtained through the efforts of any agent or broker, nor was the party of the second part introduced to the party of the first part by any such Agent or Broker, and that no commissions are to be paid by either party for the negotiation of this lease.

30. It is further understood and agreed that the lessor will furnish to the lessee steam heat during the months of October 15th to April 15th, of each year, during the term of this lease.

31. The lessee, concurrently with the execution of this lease shall deliver to the lessor, a bond with surety satisfactory to the lessor, for the sum of $1500 conditioned for the punctual payment of the rent herein specified during the term herein demised, and for the faithful performance, by the lessee, of all the terms and conditions of this lease during said term, provided however, that the extent of any damages sustained by the lessor by reason of any breach of the terms, covenants or conditions of this lease, shall not be limited to the amount stated in such bond.

IN WITNESS WHEREOF, the Market & Broad Realty Co. has caused these presents to be signed by its President, attested by its secretary and its corporate seal to be affixed, and the said Public Service Finance Corp., has caused these presents to be signed by its President, attested by its Secretary and its corporate seal to be affixed, the day and year first above mentioned.

MARKET & BROAD REALTY CORPORATION

By Thomas P. Argyris
President.

Attest:
George P. Argyris
(SEAL) Secretary.

Exhibit D. 29.

PUBLIC SERVICE FINANCE CORP.
By D. D. Hollenbaugh
President.

Attest:
Frank R. Tappan
(SEAL) Secretary.

STATE OF NEW JERSEY,
COUNTY OF ESSEX. } *ss.*

BE IT REMEMBERED, that on this 12th day of June, in the year of Our Lord, One Thousand Nine Hundred and Twenty-eight, before me, the subscriber, A Master in Chancery of New Jersey, personally appeared, George P. Argyris who being by me duly sworn, doth depose and make proof to my satisfaction, that he well knows the corporate seal of Market & Broad Realty Co. the lessor in the within Indenture of Lease; and the seal thereto affixed is the proper corporate seal of the said company; that the same was so affixed thereto and the said lease signed and delivered by Thomas P. Argyris who was at the date and execution thereof the President of said company, in the presence of the said deponent, as the voluntary act and deed of the said company, and that the said deponent thereupon signed the same as subscribing witness.

George P. Argyris

Sworn and subscribed before me
on the day and year aforesaid,

Henry Pomerehne
A Master in Chancery of New Jersey

New Jersey State Library

Exhibit D. 29.

STATE OF NEW JERSEY,
COUNTY OF ESSEX. } *ss.*

BE IT REMEMBERED, that on this 18th day of June, in the year of Our Lord, One Thousand Nine Hundred and Twenty-eight, before me, the subscriber, A Master in Chancery of New Jersey, personally appeared, Frank R. Tappan who being by me duly sworn, doth depose and make proof to my satisfaction, that he well knows the corporate seal of Public Service Finance Corp., the lessee in the within Indenture of Lease; and the seal thereto affixed is the proper corporate seal of the said company; that the same was so affixed thereto and the said lease signed and delivered by D. D. Hollenbaugh who was at the date and execution thereof the President of said company, in the presence of the said deponent, as the voluntary act and deed of the said company, and that the said deponent thereupon signed the same as subscribing witness.

Frank R. Tappan
Sec'y

Sworn and subscribed before me
on the day and year aforesaid.
Henry Pomerehne
A Master in Chancery of New Jersey.

LEASE

Between

Market & Broad Realty Corporation,

and

Public Service Finance Corp.

Dated June 1st, 1928.
Pomerehne, Laible & Kautz
Counsellors at Law
45 Branford Place
Newark, N. J.

Exhibit D. 30.

EXHIBIT D. 30.

Pamphlet entitled "Some Prominent Men on the Necessity for Industrial Banking (Popularly termed the 'Small Loan Business')."

Some Prominent Men

on the

Necessity for Industrial Banking

(*Popularly termed the "Small Loan Business"*)

Being a Compilation of the Views of Men in the Public Eye on the Industrial Loan Business as a Necessary Public Service

(Cut)

The Necessity for Industrial Banking

The following quotations taken from the expressions of men prominent in public life indicate the absolute necessity for the Industrial Loan Business:

The Franklin Fund

Benjamin Franklin:

The appropriate maximum amount of any small loan was first determined by Dr. Benjamin Franklin, as set forth in his will, dated 1791, which provided two funds of $25,000 each, to be employed in Philadelphia and Boston, to be made available by the trustees for loans to young married artificers, *up to $300,* repayable in ten instalments. The Philadelphia fun began lending in 1797 and in 1897 a large portion was given the city toward new water works as directed in the will. In 1907 the remainder of the fund was turned over to the Franklin Institute, pursuant to legislative act. *Here we have an example of an industrial loan fund, probably the first of its kind in this country, operating suc-*

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cessfully for one hundred and ten year—proving its practicability and worth.

A Definite Need

Clarence W. Wassam, Ph.D.:

Dr. Clarence W. Wassam, College of Commerce, University of Iowa, in 1907 made a survey of the salary loan business in New York City for the Charity Organization Society. Dr. Wassam wrote the preface to "The Fair Rate of Interest of Small Loans," published (1923) by the Legal Reform Bureau to Eliminate the Loan Shark Evil, Inc., New York, in which he states (p. 5):

> As the investigation proceeded, it became clearly evident to those in charge of the work that there existed a definite need for some institution or organization which would loan Money in small amounts to persons with limited resources, the loans to be repaid in small weekly or monthly instalments.

In his report on the Salary Loan Business in New York City, 1908, he states (pp. 11-12):

> The necessity of borrowing money for a short period of time is as old as the money economy under which it arises. It is common to the man of large and of small means, to the enterpreneur in business and to the man who works for a daily wage. Very few successful men could have obtained their present position had it not been possible for them to secure loans in time of temporary need. Business experience furnishes innumerable illustrations of financial ruin because of inability to secure short-time loans. It is not contended that borrowing should be encouraged, nor that the secret of success is found in the ability to secure a loan in time of need, but it is a fact that judicious borrowing is frequently an absolute necessity.

Must Be Provided

Massachusetts Legislature:

The first modern Industrial Loan Law was enacted by the Commonwealth of Massachusetts in the spring of 1911, in accordance with recommendations of a special legislative committee which made an extensive report, in which was stated:

> After hearing much evidence and many suggestions your committee came to the conclusion that there were two classes of borrowers: the borrowers through necessity and the bor-

Exhibit D. 30.

rowers through improvidence; . . . that the class of borrowers through necessity must be provided for and that the class of borrowers through improvidence must not be encouraged.

A Dignified Business

Hon. Frank H. Pope:

Hon. Frank H. Pope, Supervisor of Loan Agencies, a Division of the Massachusetts Department of Banking and Insurance under date of January 12, 1920, wrote a letter to Representative McLellan of Kentucky, in part as follows:

> This state was one of the earlier to give studious attention to the necessity of controlling the small loan business through supervision, and the wisdom of that decision has been many times demonstrated. It has brought into the business men of character, whose standing in the community equals that of those engaged in other lines of business; it has dignified the small loan business, and placed it upon a plane where it is recognized as an activity of importance and necessity.

Business, Not Charity

American Institute of Criminal Law:

Editorial from Journal of the American Institute of Criminal Law and Criminology, Chicago, May, 1919, pp. 14-15:

> . . . As long as hosts of men and women are living upon wages or salaries upon the edge of competency, a disturbance in the normal course of affairs, such as prolonged illness, necessitating hospital and medical care, or death in the family, or other accidents, the necessity for making small loans from time to time, even for the purpose of meeting household expenses temporarily, will exist. It is all very well for those who are firmly situated from the financial point of view to say that every person must always live within his income. Inevitably situations arise in which it is utterly impossible to do so from week to week. This must be recognized and conditions must be made favorable for persons who find themselves under the necessity of borrowing in such circumstances.
>
> Another point must be taken into consideration in this matter of remedial loans. The business should not be placed upon a charity basis. A survey of the character of people who, on occasion, ask for such loans shows that they are of eminently respectable class on the whole, proud, and normally self-sustaining. They demand the privilege of carrying

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their own burdens. They are not asking for charity. They pay for what they get. The psychological effect of placing the business upon a charity basis is bad and to do so is unfair . . .

Original Type of Loan

Prof. Irving Fisher:

Prof. Irving Fisher, Ph.D., of Yale University, in his book "The Rate of Interest" (1907), said:

> Private loans are loans of individuals for personal purposes other than those arising out of business relations. Of these, loans contracted because of misfortune or improvidence, though to-day constituting a very small fraction to total indebtedness, represent probably the original type of loan . . . It is clear that the theory of interest which has been pronounced applies to this species of loan. Sickness or death in one's family, or losses from fire, theft, flood, shipwreck, or other causes, make temporary inroads upon one's income. It is to tide over such a stringency in income that the loan is contracted. It ekes out the less adequate income of the present by sacrificing something from the more adequate income expected in the future.

Dignity and Confidence

Ohio Superintendent of Banks:

The Superintendent of Banks of Ohio, in his 1916 annual report on small loans companies, said:

> The operation of the restrictive provisions of the law has resulted in putting out of business many money lenders. . . . Men of high character and correct business methods—have taken their place, so that we can now say with a great deal of assurance that there is not a licensee of this department who deserves to be called a loan shark.
>
> The law has put dignity and confidence into the loan business heretofore unknown, so that loan transactions stand upon the same footing as other business transactions, and neither the borrower nor the lender has anything to cover up or be ashamed of.

The Better Sort

Hon. Raymond B. Fosdick:

Hon. Raymond B. Fosdick, Ex-Commissioner of Accounts of New York City, and director of Army Social Welfare activities

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during the World War, in an address before the Academy of Political Science in 1912, said:

> Before any campaign to oust the loan shark can be effective, there must be some agency equipped and prepared to take its place. Indeed no campaign of extermination will ever succeed. No amount of condemnation will ever be effective. No negative laws, however drastic, can permanently relieve the present abuses. As long as we have citizens who want to borrow money—and we shall always have them—so long will loan agencies of some kind continue, and it is only the better sort that will succeed in driving out the worse.

A Privilege to Help

R. W. Sharp:

Mr. R. W. Sharp, of New York, in his book on "The Chattel Mortgage Loan Business—the Disease and the Remedy" (1914) states:

> To help wipe out the lawless in any field is an appeal no public spirited citizen ought to resist. . . . It ought to change the viewpoint from one of appeal to one of privilege.

Borrowing Most Vital

Prof. E. E. Eubank:

Earle Edward Eubank, Ph.D., Professor of Sociology at the University of Cincinnati, formerly Dean of the Y. M. C. A. College, Chicago, in 1916, made an investigation of the small loan business in Chicago for the City Department of Public Welfare. In his instruction to the survey he states:

> The Small Borrower class is the one for which adequate provision has been lacking all along the way, and is still lacking, except in the ten* states which have adopted satisfactory small loan laws. Yet—such is the tragic illogic of the situation—the members of this very group are the ones to whom the necessity of borrowing in most vital. . . . In times of stress if the loan is not forthcoming the result is more than mere inconvenience or business disappointment; it is a matter of domestic suffering and possibly one of disaster, to avoid which they will, if there is no other way, place themselves in the power of the unscrupulous money lender.

(*Nineteen states now have good loan laws.)

Exhibit D. 30.

A Public Necessity

Ex-Governor Cox:

Ex-Governor James M. Cox, of Ohio, in an address made in 1917, said:

> I make bold to say that the legalized loan business is more of a necessity in an industrial community than perhaps a bank, for this reason: it is the poor man, who when he needs money, needs it most.

Demand World Old

Rev. Joseph J. Genthner:

Rev. Joseph J. Genthner, Field Director, Legal Reform Bureau, said:

> The demand for small sums of money with which to meet immediate necessities has always existed and will continue to exist so long as the world stands.
>
> After careful investigation, we find that only about 15% of the American population have access to financial facilities, which leaves approximately 85% of the people without financial accommodations in the time of need, except in the states where the necessity for the small loan business has been recognized and where practical loan laws have been enacted.
>
> The clientele of the small loan institution is not the 15% who can borrow from banks, or the poor and needy, who are also about 15% of the American population that are best assisted by charitable institutions in times of distress. The remaining 70% of the American population known as the middle class—clerks, mechanics, electric and steam railway operatives, industrial workers, public employees, some professional people, housekeepers and small business men, in fact all those who have good character, steady jobs, a reputation for paying their bills, and an income sufficient with which to live and to pay monthly instalments on a small loan. These are the people served and the people who have the same right to borrow money as have the big, influential business men who experience no difficulty in securing a loan from a bank when they want it.

A Need Exists

Dr. Roswell C. McCree and Dr. Samuel McCune Lindsay:

Dr. Roswell C. McCree, then Associate Director (in charge of the bureau of social research), and Dr. Samuel McCune Lindsay, then Director of the New York School of Philanthropy (now

president of the Academy of Political Science, New York), in their introduction to the report of Dr. Clarence W. Wassam on the Salary Loan Business in New York City, 1908, state (pp. 5-6):

> The first aim of the investigation has been to establish the fact whether or not there exists a real need for such services as those afforded by salary loan companies. On a priori grounds it is easy to show that such a need exists and that it is not met by banks, savings institutions and other agencies which supply the demand for funds in everyday business.
>
> These agencies are at the service of a man of property when an exigency arises; but not such accommodation is available for the man in a similar situation who possesses no other property than a possible meagre household equipment and who can offer no further guarantee of solvency than a lien of his weekly wage. His necessities are real and very often, if they are not to be met by charity, borrowing is the only medium through which they can be satisfied. The salary loan is a logical response to this need.

A Necessity

Pittsburgh Chamber of Commerce:

A special committee report to the Chamber of Commerce of Pittsburgh, November 18, 1909, states (p. E):

> Your committee is satisfied that an agency where individuals to whom the ordinary sources of credit are closed, can obtain money to help them over temporary financial difficulties, is a necessity in every community.

A Real Need

Virginia Legislature:

The necessity of the business is recognized in the preambles of the laws of several states. Thus, in Virginia (Laws of 1918, Chapter 402):

> It is recognized that that business of lending small sums of money upon security that is not acceptable to banks, does and will exist and there is a real need for the enactment of a law that will enable its continuance under proper supervision.

Exhibit D. 30.

Legislation Needed

Mayor Joseph H. Gainer:

In an address made at the annual meeting of the Rhode Island Industrial Lenders Association, Providence, R. I., May 6, 1924, Mayor Joseph H. Gainer, of Providence, said in part, in his discussion of the Uniform Small Loan Law which was enacted by the Rhode Island Legislature in 1923:

> I was really surprised to see the number of philanthropic agencies that were interested in this bill and the more I examined into it the more I realized the need of a bill of this kind, and realized it was not merely a business proposition. I realized it was a great social and business reform in the interest of the ordinary men and women in this country. I realized that very few people had banking connections, very few people had the ability to borrow from banks. For instance, I learned that perhaps out of 100,000,000 people about 95,000,000 out of 100,000,000 haven't the possibility of borrowing from banks on collateral security. That is rather startling. I realized that about 23 per cent only of the people in this country own their own homes. Now, when you come to think it over people who borrow money, who need money, who want to borrow it, have about two ways of getting it—either they go to their banking institutions and get it or borrow money from banks and brokers, or individuals on mortgages on their homes, and when you think of the small proportion of people who really have those possibilities, and that the great bulk of the people in the United States are forced to get money in times of need and stress in other ways, you begin to realize the need of some regulatory law for the protection of these people.

Legitimate Need

Governor William S. Flynn:

At the same meeting, Governor William S. Flynn, of Rhode Island, speaking of the Uniform Small Loan Bill which he signed, and the small loan business, said:

> My idea at that time was that it would be both serviceable to the lender and serviceable to the borrower because there is a need for such a business as this. We all know it. It is a legitimate enterprise. It serves a splendid thing in the community, and the man who is in that business gets a certificate of character, so to speak, from the State—from the State Bank Commissioner—and shows his readiness and willingness to comply with reasonable regulations. He not only helps himself but he also creates a greater confidence

Exhibit D. 30.

in those who must come to him. I dare say the result of this law will be that you will have a larger volume of business than the banks. We go into our banks, place our money there, place our savings with the reasonable confidence that the savings will be kept, maintained, and returned to us in accordance with the law because the banks are regulated, and by the same token I think that will apply to the small lender; so that it was a satisfaction to me to be able to sign that bill and it is a satisfaction to me to come here in my official capacity, as well as a friend of many of the men whom I see gathered around these tables—I was going to include the ladies; I am not so sure whether they are engaged in the business or not—if any of you may be, why, I would cultivate your friendship for future occasions when I am in need of a loan. So that we commend the spirit and purpose of this association and, as your toastmaster and as the Mayor has said, I believe it will work well, and I trust that the spirit embodied in that bill shall be enacted in other halls of legislation so that we may have throughout the United States a uniform bill of this type, and I believe that the ultimate result of that activity and of such legislation will be to place the small lender in the position which he rightfully should have, a position of honor, of decency and of position. We all will have respect for him and confidence in him because of his willingness to do business in accordance with reasonable regulations which will give him the profit which he is entitled to by virtue of the various exigencies which he must contend with in dealing with small loans, encouraging honesty if you will among the borrowers as well as among the lenders, and with an honest spirit prevailing, starting with the bank commissioner down to the lender and being reflected in the man who borrows the money you get that splendid spirit of co-operation without which government itself cannot exist. There must be co-operation between the people getting the service and the administrators of the government.

* * * *

I recognize that this is a legitimate upstanding occupation, an enterprise in which stability and confidence, as I have said before, are essential.

Exhibit D. 30.

Legislative Testimonial

Representative Harold B. Andrews:

Representative Harold B. Andrews, father of the Rhode Island small loan law, speaking of this legislation at the same meeting, said:

> I can safely say and very sincerely, to the lenders here of this Association that of the pieces of legislation which I have handled or attempted to handle in my six years on the hill, there was no piece in which I was so thoroughly interested or no piece of legislation whereby I really got so much real enjoyment out of seeing it go through and signed by his Excellency, the Governor, as that of the Small Loan Bill.

AMERICAN INDUSTRIAL LENDERS ASSOCIATION,
HARRISBURG, PA.

Exhibit D. 31.

EXHIBIT D. 31.

Balance sheet of Universal Finance Corporation as of

UNIVERSAL FINANCE

(Incorporated

BALANCE SHEET,

ASSETS

Cash		$104,062.28
Marketable Securities—at Cost (Market Value, $51,728.75)		56,406.89
Mortgage Participation Certificate—at Cost		5,000.00
Industrial Loans	$110,230.90	
Less Reserve for Uncollectible Loans	695.11	
		109,535.79
Loans to Stockholders (Corporation's Own Stock Held as Collateral)		1,067.80
Notes Receivable		3,210.00
Accounts Receivable (Including $19,315.89 due from Receiver)		26,377.95
Subscribers to Preferred Capital Stock (Subject to cancellation in Accordance with Terms of Subscription contracts) (Subscribers Not Requested to Confirm Their Balances)		217,170.96
Service Deposits Receivable		1,585.00
Furniture and Fixtures and Equipment (Depreciated Value)		10,792.02
Deferred Charges:		
Financing Expenses (After Deducting $85,800.00 Charged to Surplus Arising from Premiums on Sales of Preferred Capital Stock)	$ 93,704.25	
Organization Expenses	12,281.73	
Receivership Expenses	15,343.78	
Other	393.28	
Total Deferred Charges		121,723.04
Total		$656,931.73

NOTE:—The above statement does not include accrued

CERTIFICATE

We have made a general audit of the accounts of the
30, 1929, and

WE HEREBY CERTIFY that, subject to the collectibility
correctly sets forth the financial condition of the corporation at
Newark, April 15, 1929.

Exhibit D. 31.

FOR IDENTIFICATION.

March 30, 1929, with certificate of audit by Haskins & Sells.

CORPORATION

in New Jersey)

MARCH 30, 1929

LIABILITIES

Accounts Payable			$ 1,980.40
Dividend on Preferred Capital Stock, Payable April 10, 1929			6,998.26
Accrued Liabilities (Including Federal Income Tax)			6,877.89
Subscriptions to Preferred Capital Stock, 25,699 Shares (Subject to Partial Cancellation in accordance with Terms of Subscription Contracts)			374,817.00
Capital and Surplus:			
Capital Stock:			
Preferred — 6% Cumulative, Participating (authorized, 75,000 Shares of $10.00 Par Value Each; Issued and Outstanding 23,687 Shares)	$236,870.00		
Common (authorized 15,000 Shares without Par Value; Issued and Outstanding, 5,000 Shares)	1,250.00		
Total Capital Stock		$238,120.00	
Surplus:			
Surplus Arising from Premiums on Sales of Preferred Capital Stock	20,371.25		
Profit and Loss Surplus	21,374.22		
Total	$ 41,745.47		
Less Dividends Declared on Preferred Capital Stock During the 9 Months Ended March 31, 1929	13,607.29	28,138.18	
Total Capital Stock and Surplus			$266,258.18
Total			$656,931.73

interest receivable on industrial loans at March 30, 1929.

OF AUDIT

Universal Finance Corporation for the nine months ended March

of the industrial loans, in our opinion the above balance sheet March 30, 1929.

HASKINS & SELLS.

Exhibit—Not marked. Record in Chancery, Attorney General vs. Universal Finance Corporation, et al.

EXHIBIT—Not Marked.

File of the Court of Chancery in the case wherein Edward L. Katzenbach, Attorney General, is complainant, and Universal Finance Corporation and Financial Investment Corporation are defendants.

BILL OF COMPLAINT.

Filed December 27, 1928.

IN CHANCERY OF NEW JERSEY.

To the Honorable Edwin Robert Walker, Chancellor of the State of New Jersey:

The complainant, Edwin L. Katzenbach, Attorney General of the State of New Jersey, respectfully shows that:

1. During all the times hereinafter mentioned the complainant was and still is the Attorney General of the State of New Jersey, residing at No. 438 Bellevue avenue, in the City of Trenton, County of Mercer, and State of New Jersey.

2. The Universal Finance Corporation, one of the defendants herein, is a corporation of the State of New Jersey having its principal office at the southwest corner of Broad and Market Streets, in the City of Newark and County of Essex.

3. The Financial Investment Corporation, one of the defendants herein, is a corporation of the State of New Jersey having its principal place of business in this State at 605 Broad Street, in the City of Newark, County of Essex.

4. Complainant prosecutes this suit pursuant to the authority contained in an Act of the Legislature of the State of New Jersey known as the New Jersey Securities Act, approved March 19, 1927.

Exhibit—Not marked. Record in Chancery, Attorney General vs. Universal Finance Corporation, et al.

5. The defendant Universal Finance Corporation was originally incorporated as the Public Service Finance Corporation, and the name was subsequently changed to Universal Finance Corporation.

6. Ever since its organization the defendant Universal Finance Corporation has been and now is engaged in selling, offering for sale, promoting, negotiating advertising and distributing its capital stock and other securities within this State through the agency of the defendant Financial Investment Corporation, as well as through other agencies unknown to this complainant.

7. On or about December 13, 1928, it appeared to the complainant upon complaint and information that said defendants had engaged in, were engaging in, and were about to engage in the use and employment of deception, misrepresentation, concealment, suppression, fraud, false pretense and false promise in connection with the sale, offer for sale, promotion, negotiation, advertisement, and distribution within this state of the capital stock and other securities of the Universal Finance Corporation.

8. On or about December 13, 1928, the complainant believed it to be in the public interest that an investigation should be made of the matters referred to in the preceding paragraph.

9. By reason of the foregoing the complainant caused a subpoena ad testificandum to be served on the defendant Financial Investment Corporation, whereby said defendant Financial Investment Corporation was commanded to be and appear by its President, Vice-President, Secretary and Treasurer before Richard C. Plumer, Special Assistant Attorney General of the State of New Jersey at three o'clock in the afternoon on Wednesday, December 19, 1928, at room 1430, 24 Commerce Street, Newark, N. J., for the purpose of examination as to all the facts and circumstances concerning the issuance, sale, offer for

sale, purchase, offer to purchase, promotion, negotiation, advertisement, and distribution of securities within this state by said Financial Investment Corporation. The time for the appearance of said defendant as aforesaid was adjourned to December 20, 1928, at 9.30 o'clock in the forenoon, at which time Charles Perry, Alexander G. Edwards, Walter F. Cawthorne and Dewi T. Evans were examined under oath by said Richard C. Plumer, Special Assistant Attorney General, and a transcript of said examination is attached hereto and made a part hereof, marked Schedule "A".

10. From said examination it appears to the complainant that said defendants have engaged in, are engaging in, and are about to engage in the use and employment of deception, misrepresentation, concealment, suppression, fraud, false pretense, and false promise in connection with the issuance, sale, offer for sale, promotion, negotiation, advertisement, and distribution within this state of the capital stock and other securities of Universal Finance Corporation. And said complainant accordingly complains and alleges that:

(a) Beginning in the month of June, 1928, and from said month down to the present time, the said defendants have, in connection with the selling, offering for sale, promoting, negotiating, advertising and distributing of the capital stock and other securities of the Universal Finance Corporation, broadcast within this state, certain sales talks over the radio from station WABC and other stations, the particular designations of which are unknown to this complainant. During the period above mentioned said defendants on several occasions, the exact dates of which are unknown to complainant, broadcast within this state the following false and deceptive announcement: "As announced on Wednesday evening the price of the shares which have been offered at $15. has now been advanced to $16 per share, and that on January 1, 1929, the dividend will be increased from 10% to 12%", mean-

ing to convey and conveying to persons who heard the same that the dividend rate on said stock was 10% of the selling price of $15. a share and was about to be increased to 12% of said selling price. In truth and in fact the dividend rate above mentioned was based on the par value of said stock which was $10 per share and not on the selling price, as represented by said false and deceptive broadcast.

(b) During the period above mentioned said defendants on several occasions, the exact dates of which are unknown to complainant, broadcast within this state the following false and deceptive announcement: "In the near future an important announcement will be made relative to price advance. Do not let this opportunity pass, as you may purchase this stock at $15 per share," meaning to convey and conveying to persons who heard the same that an advance in the price of the capital stock of the Universal Finance Corporation was to be made within a very short time after said announcement, and that it was necessary to buy the stock of said company, immediately if it was to be secured at the then prevailing price. In truth and in fact, no advance in the price of the capital stock of said Universal Finance Corporation was made immediately after said announcement was broadcast, and in some instances it was broadcast for a period of at least two months before any advance in the price of said capital stock was made.

(c) During the period above mentioned said defendants, on several occasions, the exact dates of which are unknown to complainant, broadcast within this state, the following false and deceptive announcement: "This financial institution is offering for public subscription six percent. cumulative preferred stock that participates up to 50% in the entire profits at $15. per share and is now on a 10% dividend basis payable quarterly," meaning to convey and conveying to the persons who heard the same that the capital stock of the Universal Finance Corpora-

tion was paying a dividend of ten per cent of the selling price of $15 per share, whereas in truth and in fact, the said 10% dividend was based on the par value of $10 per share.

(d) During the period above mentioned said defendants, on several occasions, the exact dates of which are unknown to complainant, broadcast within this state a false and deceptive announcement to the effect that the business of the Universal Finance Corporation was under the supervision of the New Jersey State Department of Banking and Insurance, meaning to convey and conveying to persons who heard the same that the owner or owners of stock and other securities of said defendant Universal Finance Corporation were protected by such supervision. In truth and in fact the New Jersey State Department of Banking and Insurance does not and never has supervised said defendant Universal Finance Corporation nor is it authorized by law to supervise the business of said defendant as represented by said broadcast.

(e) During the period above mentioned said defendants from time to time, falsely and deceptively, advertised, within this state, by circulars and pamphlets, and broadcast within this state over the radio on dates which are not known exactly to the complainant, that the 6% per cent participating stock of the Universal Finance Corporation was paying annual dividends of 10%. In truth and in fact the moneys paid by the Universal Finance Corporation to its stockholders under the name of dividends were not in fact dividends and were not taken from its surplus nor from net profits arising from the business of the Universal Finance Corporation but almost entirely from capital. The surplus and net profits arising from the business of said Universal Finance Corporation have never been sufficient to equal the total of said moneys paid to the stockholders as dividends.

(f) During the period mentioned, said defendants dedived by means of the practices hereinbefore set forth and

declared to be illegal and prohibited by the New Jersey Securities Act approximately $366,869.72 from the sale of capital stock and other securities of the defendant, Universal Finance Corporation.

11. By reason of the foregoing it appears to the complainant that the defendants herein have engaged in, are engaged in, and are about to engage in the use and employment of deception, misrepresentation, concealment, suppression, fraud, false pretenses and false promises, in connection with the issue, sale, offer for sale, promotion, advertisement and distribution of the capital stock and other securities of Universal Finance Corporation, in violation of the New Jersey Securities Act herein before mentioned.

THE COMPLAINANT IS WITHOUT AN ADEQUATE REMEDY IN THE COURTS OF LAW AND THEREFORE PRAYS

1. That the defendants Universal Finance Corporation and Financial Investment Corporation may answer this bill of complaint and each of the statements therein made.

2. That a writ of injunction may forthwith issue restraining the said defendants, their agents, employes, brokers, officers, directors, and stockholders, from continuing such practices or engaging therein or doing acts in furtherance thereof within this state.

3. That a writ of injunction may forthwith issue restraining the said defendants, their agents, employes, brokers, officers, directors, and stockholders, from issuing, selling, offering for sale, purchasing, offering to purchase, promoting, negotiating, advertising or distributing within this state any of the capital stock or other securites of the Universal Finance Corporation.

4. That a receiver may be forthwith appointed for the Universal Finance Corporation with power to sue for,

collect, receive and take into his possession, all of the goods, chattels, rights and credits, moneys and effects, lands and tenements, books, records, documents, papers, choses in action, bills, notes, and property of every description derived by means of such practices declared to be illegal and prohibited by the New Jersey Securities Act, including also all property with which such property has been mingled, if such property cannot be identified in kind because of such comingling, and sell, convey and assign the same, and hold and dispose of the proceeds thereof under the direction of this Court.

5. That a receiver may be forthwith appointed for the defendant Financial Investment Corporation with power to sue for, collect, receive and take into his possession, all of the goods, chattels, rights and credits, moneys and effects, lands and tenements, books, records, documents, papers, choses in action, bills, notes and property of every description derived by means of such practices declared to be illegal and prohibited by the New Jersey Securities Act, including also all property with which such property has been mingled, if such property cannot be identified in kind because of such comingling, and sell, convey and assign the same, and hold and dispose of the proceeds thereof under the direction of this Court.

6. That an injunction shall forthwith issue out of and under the seal of this Court enjoining and restraining the said defendants, their agents, employes, brokers, directors, stockholders, and officers, and each of them, from exercising any of the privileges and franchises granted to the said defendants, and from collecting or receiving any debts due to either of said defendant corporations, and from paying out, selling, assigning, or transferring any of the estate, money, bonds, lands, tenements, or effects, of either of said defendant corporations until the further order of this Court.

7. That a writ of subpoena may be issued commanding the said defendants to answer this bill of complaint and

abide by such decree as this Court may make in the premises.

8. That the complainant may have such other and further relief as to this Honorable Court may seem meet and proper.

EDWARD L. KATZENBACH,
Attorney General of the State of New Jersey.

RICHARD C. PLUMER,
Special Assistant Attorney General and
Solicitor of Complainant.

Attached to the foregoing bill is a transcript of an examination by Richard C. Plumer, Special Assistant Attorney General, described in paragraph 9 of the bill and marked Schedule "A."

Said examination refers to certain exhibits identified by the witnesses, which also formed part of the bill of complaint, marked and described as follows:

D-1 Advance proof of prospectus of Universal Finance Corporation
(Note: This is the same as Exhibit S. 2.)

D-2 Book of radio talks
(Note: This is the same as Exhibit S. 6.)

D-3 List of salesmen employed by Financial Investment Corporation.

D-4 Application for surety bond by stock salesmen.

D-5 Pamphlet relating to subject of "Industrial Banking."
(Note: This is the same as Exhibit D. 30.)

D-6 Pamphlet or prospectus.
(Note: This is the same as Exhibit S. 1.)

Exhibit—Not marked. Record in Chancery, Attorney General vs. Universal Finance Corporation, et al.

D-7, 8, 9 Blank forms of subscription contract. These are the same in form as Exhibit S. 12, except that D-9 provides for a subscription at the rate of $16. per share.

D-10 Prospectus
(Note: This is the same as Exhibit S. 3.)

D-11 Prospectus

D-12 Affidavit of Irene Nolin
(Sets forth that one Foster offered to her for sale preferred stock of Universal Finance Corporation, which she did not purchase.)

D-13 Balance sheet of Universal Finance Corporation of June 30, 1928.

D-14 Financial statement as of November 30, 1928, furnished to Department of Banking & Insurance, pursuant to the statute.

ORDER FOR PRELIMINARY INJUNCTION and ORDER TO SHOW CAUSE.

Filed December 27, 1928.

This matter being opened to the Court by Richard C. Plumer, solicitor for and of counsel with the complainant in the above entitled cause, and upon reading and filing the bill of complaint and the affidavits thereto annexed and it appearing to the court that the complainant is entitled to the relief hereinafter granted:

It is on this 27th day of December, A. D. 1928 ORDERED that the defendants, Universal Finance Corporation and Financial Investment Corporation show cause before the Chancellor at the Chancery Chambers, 1060 Broad street, Newark, New Jersey on the 2nd day of January, A. D. 1929 at ten o'clock in the forenoon why an injunction should not issue in accordance with the prayer of the bill of complaint filed

herein and also why a receiver should not be appointed for the Universal Finance Corporation and Financial Investment Corporation, respectively, with power to sue for, collect receive and take into his possession, all the goods and chattels, rights and credits, moneys and effects, lands and tenements, books, records, documents, papers, choses in action, bills, notes and property of every description, derived by means of such practices declared to be illegal and prohibited by the New Jersey Securities Act including also all property with which such property has been mingled if such property cannot be identified in kind because of such comingling, and sell, convey and assign the same, and hold and dispose of the proceeds thereof under the direction of this Court:

And it is further ORDERED that the defendants, Universal Finance Corporation and Financial Investment Corporation, their agents, employees, brokers, officers, directors and stockholders, pending the hearing of this Order to Show Cause and until the further order of this Court in the premises to the contrary, be restrained and enjoined from issuing, publishing, broadcasting or otherwise circulating in connection with the issuance, sale, offer for sale, purchase, offer to purchase, promotion, negotiation, advertisement or distribution within this State of the capital stock or other securities of the Universal Finance Corporation, any statements or representations to the effect or tending to convey that the dividend rate of 10% on the capital stock of the Universal Finance Corporation is on the selling price of $15 per share instead of on the par value of $10 per share; and also from so issuing, publishing, broadcasting or otherwise circulating any statements to the effect or meaning to convey that in the near future an important announcement will be made relative to price advance, unless such price advance is so actually made; and also from so issuing, publishing, broadcasting and circulating any statement or representation to the effect that the business of the Universal

Finance Corporation is under the supervisions of the New Jersey State Department of Banking and Insurance; and also from issuing, publishing, broadcasting or otherwise circulating any statement or representation to the effect that the 6% participating stock of the Universal Finance Corporation is paying annual dividends of 10%.

And it is further ORDERED that the defendants, Universal Finance Corporation and Financial Investment Corporation, their agents, employees, brokers, officers, directors and stockholders pending the hearing of this order to show cause and until the further order of this court in the premises to the contrary, be restrained and enjoined from using or employing any deception, misrepresentation, concealment, fraud, false pretense or false promise in connection with the issuance, sale, offer for sale, purchase, offer to purchase, promotion, negotiation, advertisement or distribution within this State of any of the capital stock or other securities of the Universal Finance Corporation or doing any acts in furtherance thereof within this State.

And it is further ORDERED that the defendant Financial Investment Corporation its agents, employees, brokers, officers, directors and stockholders, pending the hearing of this Order to Show Cause and until the further order of this Court in the premises to the contrary shall absolutely desist and refrain from contracting any new debt or debts, from collecting or receiving any money owing to the said defendant, Financial Investment Corporation or from paying out any money or selling, assigning or transferring any of its property, estate or effects of any kind whatsoever.

And it is further ORDERED that the defendant, Universal Finance Corporation, its agents, employees, brokers stockholders, directors and officers, specifically including Dale D. Hollenbaugh, President and Dewi T. Evans, Secretary and Treasurer, both individually and as such officers, shall absolutely desist and refrain from contracting any

new debt or debts or collecting or receiving any money owing to said defendant, Universal Finance Corporation or from paying out any money or selling, assigning or transferring any of its property, estate or effects of any kind whatsoever.

It is further ORDERED that a copy of the bill of complaint, the affidavits and schedules thereto annexed as well as a copy of this Order, which copies may be certified by solicitor of complainant, be served upon the said defendants within 3 days from the date hereof.

E. R. WALKER,
C.

Respectfully Advised,

ALONZO CHURCH,
V.-C.

AFFIDAVITS ON BEHALF OF DEFENDANTS.

The following affidavits were filed on behalf of defendants on January 4, 1929, on the return of the above order to show cause of December 27, 1928.

(*Affidavit of Ralph S. Johns.*)

STATE OF NEW JERSEY,
COUNTY OF ESSEX. } *ss.*

RALPH S. JOHNS, of full age, being duly sworn according to law, on his oath deposes and says:

1. I am a certified public accountant and have been for about three and one half years. For about two and one half years last past I have been in the service of Haskins & Sells, certified public accountants, with offices in New York City and other principal cities of the United States, and also in London, Paris, Berlin, Montreal, Mexico City, Shanghai, Manila and Havana.

Exhibit—Not marked. Record in Chancery, Attorney General vs. Universal Finance Corporation, et al.

2. My headquarters are located in the City of Newark, N. J., and my work is under the direct personal supervision of Wallace M. Coursen, a member of the firm of said certified public accountants.

3. Pursuant to his direction, I made an examination of the books and other records of Universal Finance Corporation. One of the other men associated with the Newark office was also assigned to this work with me and we were at the office of said corporation, auditing their books and preparing a report thereon, continuously, from about June 1st to about August 1st. This audit covered the period from the organization of the company, March 24, 1928, up to June 30, 1928.

4. As a result of this audit, the balance sheet dated June 30, 1928, (Exhibit D-13 attached to the bill of complaint) was prepared and certified by the firm of Haskins & Sells, except, however, that the balance sheet as thus certified did not include therein the second paragraph of the note which appears at the foot of said exhibit, to wit:

> "The above statement does not include accrued interest and dividends receivable on securities held at June 30, 1928 ($168,661.29) and value of rights accrued to June 30, 1928."

This balance sheet shows among the assets that there were industrial loans receivable as of June 30, 1928, amounting to the sum of $10,110.00. The first of such loans was made in the early part of May 1928. Our records do not show the amount of the accrued interest receivable on said loans but if the average duration thereof was for one month, the estimated amount of such accrued interest as of June 30 would be about $250.00. The fact that the records are not now in the possession of the company precludes me from making an accurate calculation of this item at this time.

5. The said balance sheet also shows in the list of assets "marketable securities—at cost" $168,661.29. The

balance sheet refers to Schedule 1, which contains a list of the securities as of that date, together with their cost price and the market value as of that date. Photographic copy of said schedule, which is attached, is marked exhibit Y.

6. This balance sheet does not consider dividends which had been declared and were payable on certain of the stocks named on Schedule 1 prior to June 30, 1928, but had not been received by the company at that date. These dividends were as follows:

Public Service Corporation of New Jersey	(50	shares)	$25.00
Standard Oil Company of New Jersey.	100	"	37.50
Guaranty Trust Co. of NY	10	"	40.00
Canadian Pacific Railway	25	"	62.50
			$165.00

7. Said balance sheet does not state in detail the value of rights on certain of the above stocks, but in the column of Schedule 1, headed "Cost," there is included the cost of said rights, as exercised.

8. Of the stocks shown on Schedule 1, the dividends on the following stocks of those named in Schedule 1, were due on July 2nd, 1928:

American Exchange Irving Trust Co.,	$35.00
Hanover National Bank.	60.00
Kennecott Copper Company.	31.25
National Dairy Products.	37.50
National City Bank.	16.70
	$180.45

9. According to the records of the corporation, which were shown to me, the first dividend was declared at a meeting of the Board of Directors held June 14, payable on July 2nd, 1928, to stockholders of record as of June 20th. This dividend amounted to the sum of $1,208.75,

and is so stated in the balance sheet of June 30, 1928. After charging the dividend of $1,208.75, there remained at June 30, 1928, a net surplus of $3,296.00 arising from premiums on sales of preferred capital stock.

10. The said dividend of $1,208.75, as shown on said balance sheet was declared exclusively to the preferred stockholders. The examination of the books and records of the company shows that at no time was any dividend declared or paid on the common stock.

11. The books show that in September 1928, a second dividend was declared, payable September 30th, to stockholders of record as of September 20th, amounting to the sum of $2,476.20. This dividend was declared and paid on the preferred stock only.

12. The books further show that as of September 30, 1928, the company had, after provision for the dividend of $2,476.20, a net surplus of $3,756.55 arising from premiums on sales of preferred capital stock.

13. The books show that as of September 30, 1928, the total industrial loans receivable amounted to $41,387.61, and that the "marketable securities—at cost" amounted to $171,441.42; the books further show that during the month of September there was a profit on the sale of investments amounting to $2,857.00. In addition to said profit, the books show earnings as follows for the month of September:

Interest on loans	$534.99
Interest on bonds	158.34
Dividends on stock.	478.88
	$1172.21

After deducting all expenses for the month of September the books show that there was a net profit to the corporation of $1,804.99.

Exhibit—Not marked. Record in Chancery, Attorney General vs. Universal Finance Corporation, et al.

14. The books further show that as of October 31, 1928, the total industrial loans receivable amounted to $61,-848.26, and that the "marketable securities" then on hand "at cost" amounted to $152,682.66.

15. The annual report which was filed with the Commissioner of Banking and Insurance on December 20, 1928, shows the balance sheet as of November 30, 1928. Said report containing this balance sheet was prepared by Haskins & Sells, from the books of the company without audit. This is the report which is attached to the bill of complaint as Exhibit D-14. This report shows that the amount of industrial loans receivable as of November 30, was $78,-106.27, and the securities were $109,253.28.

16. According to the daily cash report of the corporation for December 21, 1928, which I found among the records of the company, the loans on that date amounted to the sum of $99,721.04.

17. Referring to D-14 (annual report containing a balance sheet as of November 30, 1928,) wherein appears, under the head of "liabilities," and the sub-title "Surplus" an item of "profit and loss surplus" amounting to $1,510.65. This item is based on the arbitrary assumption that June 30th was the close of the period of organization and the beginning of the period of operation.

18. The balance sheet as of November 30, 1928, does not include accrued interest receivable on industrial loans at that date. In my opinion the amount of such accrued interest as of November 30th would be at least $1,000.00. The fact that the records are not now in the possession of the company precludes me from making an accurate calculation of this item at this time.

19. Under the head of "Liabilities" on said Exhibit D-14, appears an item "Accrued interest on stock subscription collections" amounting to the sum of $1,781.10. This item represents a reserve which was set up to pay

4% interest on stock subscription collections. This payment of 4% to subscribers for stock is made in accordance with the resolution of the directors of the corporation but is not payable to the subscribers until the full amount of the subscription has been received by the corporation. The principle on which this procedure is based is supported by well-settled practice among corporations which sell shares on an instalment basis.

20. The books show that for the period from March 24, 1928, to November 30, 1928, the company received $366,869.72 on subscriptions to preferred capital stock, shown in Exhibit D-14 under the head "Receipts and Disbursements for the period from March 24, 1928, to November 30, 1928," and under the sub-title "Receipts" as follows:

Capital stock (fully paid)	$239,761.00
Subscriptions to capital stock.	127,108.72

The item of $239,761.00 represents the gross amount (before deducting commissions) paid by subscribers for the 16,658 shares of preferred capital stock fully paid and outstanding at November 30, 1928. The item of $127,108.72 represents gross collections (before deducting commissions) received from subscribers on subscriptions to preferred capital stock not fully paid at November 30, 1928. The books show that at November 30, 1928, the total subscriptions to preferred capital stock not fully paid amounted to $301,130.00 (20,837) shares. This item is also shown under the head "Liabilities" in the aforementioned Exhibit D-14. These subscriptions of $301,130.00, less collections according to the books of $127,108.72 applicable to such subscriptions, leave as an amount due from subscribers, per books, at November 30, 1928, of $174,021.28. This item is shown under the head "Assets" on the balance sheet of the aforementioned Exhibit D-14.

The books show that up to November 30, 1928, subscriptions amounting to $540,891.00 (37,495 shares) had

fully paid subscriptions and $301,130.00 (20837 shares) applicable to subscriptions not fully paid. The books further show that commissions on subscriptions have amounted to $136,062.75. The books further show that the net collections received by the company up to November 30, 1928, have been $230,806.97—gross collections on subscriptions to 37,495 shares of $366,869.72, less commissions of $136,062.75 applicable thereto.

21. The firm of Haskins & Sells has been engaged to review the books and records monthly. I have done this work personally for each month except July. This work usually requires about a week for each month. Thereby, I have become familiar with the records of the company and the investments of its surplus cash. In my opinon the books were kept accurately and according to proper accounting principles, and the surplus cash of the Company was from time to time invested in high class securities.

22. It is my understanding that the firm of Haskins & Sells has been engaged to audit the books of the Universal Finance Corporation for the six months ended December 31st, 1928.

(Sgd) RALPH S. JOHNS

Sworn and subscribed to before me
this 1st day of January 1929.

JOHN J. GAFFEY,
A Notary Public of New Jersey.

Attached to the foregoing affidavit is a copy marked Schedule "Y" of the list of marketable securities as of June 30, 1928.

(Note: This is the same as Exhibit D. 18.)

Exhibit—Not marked. Record in Chancery, Attorney General vs. Universal Finance Corporation, et al.

(*Affidavit of Richard J. Fitzmaurice*)

STATE OF NEW JERSEY }
COUNTY OF ESSEX } *ss.*

RICHARD J. FITZMAURICE, of full age, being duly sworn, according to law, on his oath, deposes and says:—

1. I have been requested by George S. Hobart, Esq., of the firm of Hobart & Minard, and George T. Vickers, Esq., solicitors for the above named defendants, to make affidavit as to the following facts, within my knowledge, concerning the above named defendant companies. I never had any interest in nor connection with the defendant, Financial Investment Corporation. I was a director and vice-president of the defendant, Universal Finance Corporation, which company accepted my resignation on December 26, 1928, and I have no further connection with the said defendant, Universal Finance Corporation. I had no knowledge, information or belief as to any irregularity in the conduct of the business of the defendant company, Universal Finance Corporation. The first intimation of any alleged irregularities by this company to come to my knowledge was on Saturday afternoon, December 22nd, 1928, when my attention was called to an article in a newspaper published in Orange, New Jersey, known as the Daily Courier, to the effect that both the defendant companies were under investigation by the Davis Committee of the Legislature; and that the Financial Investment Company was charged with fraudulent methods in selling the stock of the Universal Finance Corporation of which company I was then a director and vice-president. The newspaper stated that persons connected with the Financial Investment Corporation were using fictitious names over the radio in connection with the sale of said stock and that the Universal Finance Corporation had paid dividends to its stockholders from the capital of said company.

Exhibit—Not marked. Record in Chancery, Attorney General vs. Universal Finance Corporation, et al.

2. I immediately endeavored to get in touch with the officers and directors of Universal Finance Corporation but was unable to do so. On the following Monday morning I got in touch with Mr. Dale D. Hollenbaugh, the president of Universal Finance Corporation, and Mr. Dewi T. Evans, secretary and treasurer of said company. A special meeting of the Board of Directors, consisting of the above two gentlemen and this deponent, was called and held that morning, December 24th. I inquired of Messrs. Hollenbaugh and Evans as to what the charges were all about and I was informed by Mr. Evans that he had been requested some days before to attend at the office of Richard C. Plumer, special assistant attorney-general in Newark, with which office he was connected, and that Mr. A. G. Edwards, president of the Financial Investment Corporation was also asked to attend. I was informed that both Messrs. Evans and Edwards had testified before Mr. Plumer as to the charges against both defendant companies, in their respective capacities and connections with said companies, and that they were satisfied that they had fully and satisfactorily answered the charges. I informed Messrs. Hollenbaugh and Evans that despite the lack of knowledge on my part of the truth, or otherwise, of the charges that, nevertheless, the Universal Finance Corporation should immediately stop the sale of its stock by the Financial Investment Corporation. Accordingly, a resolution was introduced by me, and unanimously adopted, directing the Financial Investment Corporation to immediately stop the further sale of any stock of Universal Finance Corporation. A copy of this resolution was immediately prepared at my request the copy was certified by Mr. Hollenbaugh, as president of the company. I thereupon took this resolution to Mr. A. G. Edwards, president of Financial Investment Corporation, and handed the same to him with the request that he immediately acknowledge receipt of the same and comply with the directions therein contained. Mr. Edwards insisted that the charges against his company were untrue and

unfounded and he showed considerable reluctance in having the sale of the stock stopped. After insistance, Mr. Edwards furnished me with a letter addressed to Mr. Plumer at his office in the Federal Trust Building, in Newark, advising Mr. Plumer that he had received instructions from the Universal Finance Corporation to immediately stop the further sale of any stock of that company and that he was immediately complying with the request.

3. I immediately went to the office of Mr. Plumer and explained to him what I had done and informed him that as soon as I received the letter from Mr. Edwards that day I would get the same into his hands together with a certified copy of the resolution of the directors of Universal Finance Corporation. Later that same day when the letter addressed to Mr. Plumer, as above stated, was delivered to me I telephoned Mr. Plumer at his office and informed him that I had received the same and was forwarding the letter and certified copy of the resolution to him that day by registered mail. I accordingly forwarded the letter and certified copy of resolution to Mr. Plumer at his office in the Federal Trust Building, #24 Commerce Street, Newark, by registered mail and received the attached return receipt showing the receipt of same by Mr. Plumer's office on December 26, 1928.

4. I was asked to become a director of Universal Finance Corporation by Mr. Frank R. Tappan who was an acquaintance of mine and who was one of the incorporators and secretary of the company. He acquainted me with the other directors and officers of the company. I learned that Mr. Evans was in the office of Richard C. Plumer, special assistant attorney-general, in Newark, in charge of investigating Stock Companies, etc., and who, I understand, had been in the employ of the State of New Jersey over fifteen years. I was informed that Mr. Hollenbaugh was a personal friend of Mr. A. G. Edwards,

whose family owned the controlling interest in the company, and that Mr. Edwards was the person who had successfully sold the capital stock issue of the company, which was then known as Public Service Finance Corporation, and that he had become interested in the formation of Public Service Finance Corporation through his knowledge of the desirability of the small loan business which he had acquired through the sale of stock of a similar organization known as the Plaza Loan Society; that Mr. Conover English, of Messrs. McCarter & English, of Newark, had incorporated the company and that Messrs. McCarter & English were general counsel for the company.

5. I subsequently consented to become a director of the company and had assigned to me from the stockholdings of Mr. Hollenbaugh three hundred thirty-three (333) shares of common stock, of a par value of Twenty-five ($.25) cents per share for a total of Eighty-three Dollars and Twenty-five cents ($83.25), and subsequently thirty-five (35) shares of preferred stock having a par value of Ten ($10.00) per share. At a subsequent meeting of the Board of Directors I was elected vice-president of the company. I attended a number of meetings of the Board of Directors of the company and my recollection is that I attended every meeting of the Board of Directors during the time I was connected with the company. I distinctly recall the meeting of the Board of Directors for the purpose of considering the declaration of a dividend. I was informed that Haskins and Sells, certified public accountants and who are considered one of the leading accounting firms in the County, were engaged as the accountants of the company and had submitted a statement of the condition of the company. Mr. Evans, treasurer of the company and who was present at the meeting, advised the directors that the company was in a position to pay a dividend. He stated that the earnings of the company from loans granted and income from securities were sufficient to

more than pay the proposed dividend and accordingly the dividend was voted. Mr. Evans, as treasurer of the company, was in direct charge of the finance of the company. At the time I was asked to join the company, in addition to the responsibility of the then personnel of the directors and officers, an attractive feature of the proposition was that practically all of the capital stock of the company had been sold. The company had invested some of the proceeds of the sale of its capital stock in the securities before I was asked to become a director. At the first meeting of the directors I attended the question of investing the balance of these funds was considered. I suggested that the National City Company, through its Newark office, be asked to give its advice for the investment of these funds. This was agreed upon and I accordingly asked Mr. R. H. Monaghan, a representative of the company, to call at the office to meet Mr. Edwards for the purpose of such investment; subsequently the securities suggested by the National City Company were purchased. I examined the list of securities at a later meeting and all of the securities were high class and readily marketable. It was the purpose of the company, as is the practice of all Finance Companies having no immediate demand for all of its funds, to keep all funds not immediately necessary for the conduct of its business invested in high class securities and as the funds were needed for the operation of its business to dispose of certain of the securities for that purpose. The information given by Mr. Evans was that some of the securities of the company had been sold at a profit and that the balance would not be disposed of until and when the business required the use of the funds. From my experience in other companies I saw nothing unusual about such procedure.

6. At about that time, which was in May, 1928, my attention was called to the fact that Public Service Corporation had requested the Public Service Finance Corporation to select some other name than Public Service stating that

Exhibit—Not marked. Record in Chancery, Attorney General vs. Universal Finance Corporation, et al.

there had been confusion in mail, telephone calls and the like. My understanding was that the matter was immediately taken up with Messrs. McCarter & English and that Mr. English had advised the company that they should stand on their rights in the matter. Subsequently when the Public Service Corporation applied to the Court of Chancery for an injunction against the Public Service Finance Corporation for using the words 'Public Service' I was asked to advise the company in the matter. I accordingly communicated with Mr. English and informed him that the company was insisting upon continuing the use of the name due to the expense it had gone through in incorporating, advertising matter and the like. I received a reply from Mr. English under date of May 31, 1928, in which Mr. English acknowledged receipt of my letter and in which he stated that the company was entirely within its rights in taking the position stated in my letter and in defending itself in the use of the name; that the determination of the directors, however, placed his office in a somewhat embarrassing position and that, under the circumstances, his firm would be unable to represent Public Service Finance Corporation in the matter and suggested that other counsel be retained. The bill of complaint and affidavits in the injunction suit were turned over to me. The complaint alleged that Public Service Corporation of New Jersey had been using that name for twenty-five years and that the similarity of the name of Public Service Finance Corporation was causing considerable confusion between the two companies. The bill was supported by affidavits and after acquainting myself with the situation I advised the Public Service Finance Corporation that it should select some other name. Accordingly correspondence and conferences were had with the Public Service Corporation, Legal Department, as a result of which the name 'Universal' was suggested and the company accepted the suggestion and accordingly directed this deponent to prepare the necessary papers to have the

name of the company changed. I advised Wendall J. Wright, of the Legal Department of Public Service Corporation, who had charge of this matter, that the company would immediately take the necessary steps to amend its certificate of incorporation using the name 'Universal' as suggested, and that I would consent, in behalf of the company, to a decree. Accordingly, Mr. Wright prepared a form of final decree setting forth the fact that since the institution of the injunction suit the defendant company, Universal Finance Corporation, had changed its name and therefore that the decree be entered without cost to either party as against the other. This decree was consented to when submitted to me sometime around September 1, 1928. At the time I was preparing the amendment to the certificate of incorporation providing for the change of name of Public Service Finance Corporation to Universal Finance Corporation, Messrs. Hollenbaugh and Evans the other directors of the company, suggested that the proposed amendment provide also for an increase in both the common and preferred stock of the company so as to have the same available for expansion purposes as the business of the company grew. Accordingly, the certificate of incorporation was amended changing the name to Universal Finance Corporation and providing for the increase capital stock. The certificate was amended and the increase in the capital stock provided for in the month of June, 1928. None of this increased capital stock was offered for sale by the company through the Financial Investment Corporation, or any other source, to the knowledge of this deponent or by any official action of the Board of Directors of the company until the early part of December, 1928. This deponent received a notice of a meeting of the board of directors to be held at the office of the company which was then located at the corner of Broad and Market Streets, Newark, for December 5, 1928, at 4:00 P. M. I attended this meeting of the board of directors and Messrs. Hollenbaugh and Evans explained that the

Exhibit—Not marked. Record in Chancery, Attorney General vs. Universal Finance Corporation, et al.

company had made loans to date of approximately One Hundred Thousand ($100,000.00) Dollars and that they had inspected several desirable locations in Elizabeth and New Brunswick for the establishment of Branch Offices. After a discussion it was decided to establish a branch office in both of these places. Mr. Evans suggested that some of the increased capital stock of the company, which increase had been provided for some six months before in the amended certificate of incorporation, be disposed of for the purpose of providing capital for the establishment of these two branch offices. I suggested that some of the securities of the company be sold for the purpose of this capital and was opposed to the sale of any additional capital stock for this purpose. Mr. Evans explained that the market was not a good one for the sale of the securities plus the fact that the Broad and Market Street office of the company had loaned approximately One Hundred Thousand ($100,000.00) Dollars to that date and that at that rate it would be only a short time before the remaining capital, as evidenced by the securities, would be required for the use of the home office that Mr. Edwards who had sold the original capital stock issue of the company, had formed a corporation called the Financial Investment Corporation and was in a position to dispose of the stock for the purpose of expansion. I knew of no complaints against the company nor against Mr. Edwards and knowing that Mr. Evans was in close contact with the entire situation that if he was satisfied it was desirable to sell a block of the stock to establish the branch offices, the matter would be handled in a satisfactory manner. Accordingly the directors voted to have the stock sold through the Financial Investment Corporation, the details concerning the same to be taken care of by Messrs. Evans and Hollenbaugh.

7. I have never heard the stock of Universal Finance Corporation offered for sale by the Financial Investment Corporation or anyone else over the radio. I have no con-

nection whatsoever with the Financial Investment Corporation and know of no misrepresentations made by that concern or anyone else in connection with the stock of Universal Finance Corporation. The first time I learned of any alleged misrepresentations was from the newspaper article, as above stated. I never knew that Mr. Hollenbaugh broadcasted over the radio under the name of Dale Davis. After this was brought to my attention I inquired of Mr. Hollenbaugh and learned that he was employed by Mr. Edwards for this purpose and that he used his christian and middle name, Dale Davis, which he had been accustomed to doing for many years as a professional radio announcer and entertainer. Mr. Hollenbaugh exhibited to me photographs of himself in local papers, some of which were published several years ago, and which photographs designated him as Dale Davis. Mr. Hollenbaugh informed me that at no time was the name Universal Finance Corporation used either by him or anyone connected with Financial Investment corporation in the offer of the sale of the stock of that company over the radio.

8. I was only in the office of Universal Finance Corporation, located at Broad and Market Streets, Newark, on one occasion and that at the meeting of the directors held on December 5, 1928, as above stated. I attended, however, other meetings of the board of directors at its former office in the National State Bank Building and at no time since my connection with the company did I have any knowledge nor was anything brought to my attention by anyone of any irregularity in the conduct of the business of the company. I informed Mr. Plumer either that I was about to become a director of Universal Finance Corporation or had just become a director of the company, and inquired of him as to the responsibility of Mr. Evans of his office and whether he knew that Mr. Evans was an incorporator and officer of the company. Mr. Plumer informed me that he knew of Mr. Evans connection with the company and that when his attention had been called to the

Exhibit—Not marked. Record in Chancery, Attorney General vs. Universal Finance Corporation, et al.

fact that he had been described in the literature of the company by his official capacity in the Attorney-General's office, he had instructed him to, in no way, connect his official capacity with the company.

(Signed) RICHARD J. FITZMAURICE.

Subscribed and sworn to this 31st day of December, 1928, before me.

HELEN A. MCCARTHY,
(SEAL) Notary Public of N. J.

On face of receipt:

POST OFFICE DEPARTMENT
OFFICIAL BUSINESS

REGISTERED ARTICLE

No 8511

INSURED PARCEL
No.....
Stamped Newark, Dec. 27 6 P M 1928 N. J.

Penalty for Private Use to Avoid Payment of Postage $300

Postmark of Delivering Office and Date of Delivery

NOTIFY YOUR CORRESPONDENTS OF CHANGE OF ADDRESS

RETURN TO RICHARD J. FITZMAURICE
(Name of Sender)
Street and Number,)
or Post Office Box) 308-310 Main St.,
Post Office at.....
State Orange, N. J.

Exhibit—Not marked. Record in Chancery, Attorney General vs. Universal Finance Corporation, et al.

On reverse side of receipt:

RETURN RECEIPT

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

Richard C. Plumer
(Signature or name of addressee)
L. Trumbauer
(Signature of addressee's agent)

20008 R. J. F.

Date of delivery 12/26, 1928

Form 3811 Government Printing Office.

(Affidavit of Dale Davis Hollenbaugh)

STATE OF NEW JERSEY, }
COUNTY OF ESSEX. } *ss.*

DALE DAVIS HOLLENBAUGH, of full age, being duly sworn according to law, on his oath deposes and says:

1. I am the President of Universal Finance Corporation, one of the defendants named in the above entitled cause.

2. A certified copy of the certificate of incorporation issued to Public Service Finance Corporation is hereto attached and made a part of this affidavit, and is marked Exhibit "A", and a copy of amended certificate of incorporation, changing the name from Public Service Finance Corporation to the Universal Finance Corporation, is likewise attached hereto and made a part hereof, and marked Exhibit "B".

The change of name above referred to was brought about as the result of a bill filed in the Court of Chan-

Exhibit—Not marked. Record in Chancery, Attorney General vs. Universal Finance Corporation, et al.

cery of New Jersey by Public Service Corporation of New Jersey and final decree restraining the Public Service Finance Corporation from the further use of that name was entered by consent, without costs, on or about September 1st, 1928; the Public Service Finance Corporation having in the interim, on or about June 29, 1928, changed its name to the Universal Finance Corporation as appears by the endorsement on Exhibit "B".

3. The original incorporation of the defendant, Universal Finance Corporation was handled through the office of McCarter & English, Esquires, and personally by Conover English, Esq., and all of the details of its organization and the beginning of its business was under his supervision.

4. Shortly after the organization of Public Service Finance Corporation, the Company obtained authority to engage in the business of making small loans, pursuant to Chapter 49, Laws of 1914, and license No. 554 was issued to the corporation by the Commissioner of Banking and Insurance of the State of New Jersey; after this license was received and the Company began such business, a prospectus was issued through A. G. Edwards, trading as Public Service Sales Company. This prospectus gave the names of the officers and counsel of the defendant corporation, as of the time it was issued, as follows:

President:	D. D. Hollenbaugh
Vice President:	Hon. Richard J. Fitzmaurice
Secretary:	Frank R. Tappan
Treasurer:	D. T. Evans
General Counsel:	McCarter & English.

All of the above named officers, at the time this prospectus was issued, were in fact acting as such officers and the firm of McCarter & English was in fact acting as general counsel, and the publication of their name on such prospectus was made after consultation with Mr. English of that firm and with his knowledge and approval.

Exhibit—Not marked. Record in Chancery, Attorney General vs. Universal Finance Corporation, et al.

5. In accordance with the provisions of said statute of 1914, the corporation applied to the Commissioner of Banking and Insurance for a license to engage in business under said statute, in the form prescribed by said Commissioner and paid the sum of Fifty ($50.00) Dollars therefor; this application complied in every respect with the requirements of said statute and the license was issued in due course.

6. As required by said statute, the said corporation on December 20th, submitted a report to said Commissioner, in the form of a trial balance of its books and as of the close of business on November 30, 1928, including therein a statement of liabilities and assets and all such other information as was called for by said Commissioner in accordance with the form furnished by him; this report was prepared by the firm of Haskins & Sells, Certified Public Accountants, and a copy thereof is attached to the bill of complaint as exhibit "D-14".

7. At the time the application was made for said license, the corporation executed and filed a bond to the State of New Jersey, in the penal sum of Five Thousand ($5,000.00) Dollars, with said Commissioner, which was duly approved by him, for the faithful observance of all laws relating to the business authorized by said statute; the surety on said bond was the National Surety Company, which I am informed is duly authorized by the laws of New Jersey to transact business within this State.

8. Said license was originally granted in the name of Public Service Finance Corporation and as soon as same was received was kept posted in a conspicuous place in the office where the business of the corporation was transacted, to wit, in an office located in the National State Bank Building, 810 Broad Street, Newark, New Jersey; when the name of the corporation was changed to Universal Finance Corporation, the license was transferred by said Commissioner to said name.

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On July 1st, 1928, the corporation moved its place of business to the third floor of 789 Broad Street, Newark, New Jersey, where it has been continuously in business until on or about the 26th day of December, 1928, and during that time said license was posted in such office as required by the statute.

9. Under the license so issued, the said corporation has not transacted business at any other office or place of business, except those permitted by the said license and the said transfer thereof; and neither said corporation or any other person, corporation or association has transacted or solicited business in any other name at said offices or either of them.

10. In accordance with the provisions of said statute and the regulations issued thereunder, the Company filed an appointment of an agent, to wit, the deponent, resident in New Jersey, upon whom service of process and legal notice might be made.

11. Since on or about July 1, 1928, Mr. Elmer F. Hardy has been the General Manager of the Company. I am informed by him that on or about September 1, 1928, a Mr. Sullivan, who said he represented the Commissioner of Banking and Insurance, requested him to remove from the windows facing on the street, the words, "Industrial Banking." This was done immediately, in accordance with said request.

I am further informed that at the time Mr. Sullivan called at the office, he was furnished, at his request, with a complete file of all forms, stationery, advertisements, and other literature, prepared and used by the Universal Finance Corporation.

12. During the entire time that the Company has been in business there has been no loan or advancement greater than $300.00, to any person, nor has any one person ever owed the Company, on a loan made under said statute, more than $300.00, either directly as maker, or indirectly

as endorser or guarantor; and on all the loans made under said statute, the corporation at no time charged or received of the borrower a greater rate of interest than 3% per month.

As a matter of corporation policy, it has been the practice since the Company started in business to give the borrower the benefit of an interest charge where his loan fell due upon a Sunday or other legal holiday, and not charge for the additional day or days; and also where the borrower, having contracted for the use of the money for a definite period, desired to pay off his indebtedness prior to the expiration of that period, to give him the privilege of paying it off with interest charges to the date of actual payment, rather than for the time the loan was originally made and for which interest would otherwise be chargeable.

So far as I know, this is an innovation in the method of conducting the small loan business, and this practice Universal Finance Corporation carried out in the conduct of the business.

It has also been the policy of the Company to permit borrowers, on their own request, to pay off the installments of principal of loans, in larger amounts than that fixed upon by the terms of the contract, at a saving of interest to the borrower.

13. During the entire period of the Company's existence, I have instructed all of the employes of the Company to familiarize themselves with and to comply with the provisions of said statute and of all rules and regulations of the Commissioner made thereunder; copies of the said statute and regulations were kept at the office for the reference of the officers and employes of the corporation.

14. Said license number 554, remained in the office of the Company until sometime during the day of Wednesday, December 26, 1928. Late in the afternoon of that day, I received a telephone call from the General Manager, Mr.

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Hardy, advising me that a Mr. Sullivan from the office of the said Commissioner, had removed the license from the office and had told him that the corporation would undoubtedly receive word the next day as to the reason for its removal.

15. It has been my custom ever since the Company was organized to be at its office a large part of practically every business day; up to December 26th no complaint by said Commissioner or any one in his behalf had ever been made as to the method in which the corporation conducted its business, with the single exception that said Sullivan requested the General Manager to remove from the window, as aforesaid, the words "Industrial Banking" and this request was immediately complied with.

The first word that I received that said license had been removed, was made in the afternoon of December 26th, when Mr. Hardy telephoned me saying that Mr. Sullivan refused to give any reason for it and that I would undoubtedly get word from the Commissioner the next day. Up to the time of the making of this affidavit, no official notice has been received as to the reason for the removal of the license.

16. A copy of the rules and regulations herein-above referred to, issued by the Department of Banking and Insurance of New Jersey, is hereto attached and made a part of this affidavit, and is marked Exhibit "C."

17. The Universal Finance Corporation, has itself, never engaged in selling, offering for sale, or advertising or distributing its capital stock, except thru the Financial Investment Corporation, under certain contracts to which deponent hereafter refers; and has never been engaged directly or indirectly in either selling, offering for sale, promoting, negotiating, advertising or distributing any other stock or securities, other than the purchasing and reselling of stocks and other securities as an investment of its surplus capital, as set forth in the affidavit of Ralph S. Johns and Dewi T. Evans.

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Deponent is unable to give the exact details and terms of the contracts made with Financial Investment Corporation, for the reason that all of the records and papers of deponent's corporation, the Universal Finance Corporation, were seized by the Prosecutor of the Pleas, of Essex County on December 26th and have not yet been returned; on Saturday morning, December 29th deponent through his counsel made demand upon said prosecutor for the return of the records and the demand was refused; Based upon his recollection as to said contracts, they were four in number, the first three thereof provided in substance that the Financial Investment Corporation would undertake the sale of the stock of the Universal Finance Corporation and pay all the expenses of such sale, for a charge of 25% of the sales price; such contracts referred only to the sale of the preferred stock and did not include any provision for the sale of the common stock. The first three of these contracts provided that the sales price should be, for part of the stock, the sum of $14.00 per share and for the balance of the stock the sum of $15.00 per share. Deponent is unable to state the exact number of shares to be sold at said prices respectively.

18. The fourth contract provided that the price per share would be $16.00 (in all cases the par value of the shares to be sold was $10.00 per share).

The fourth contract further provided that the Financial Investment Corporation should give its note for $20,000.00 to the Universal Finance Corporation and said note was in fact given and delivered to the Universal Finance Corporation. Part of the consideration for said note was that the Financial Investment Corporation should have the exclusive right to the sale of additional stock.

19. This contract and said note were cancelled on December 24th, 1928, by the Universal Finance Corporation, with the assent of the Financial Investment Corporation and Mr. Richard C. Plumer, Special Assistant to the At-

torney General was notified in writing to that effect by letter of that date by Mr. Richard F. Fitzmaurice as set forth in detail in the latter's affidavit.

20. When stock of the Universal Corporation was sold pursuant to the above contracts, the subscriptions for same were delivered to the Universal Corporation and when said subscriptions were paid for in full, stock certificates were issued from time to time to the subscribers, in the form of which a photostatic copy is attached hereto, marked exhibit "D."

21. As President of the Universal Finance Corporation, I have never been subpoened or requested to appear before the Attorney General or any one representing him; and so far as I am informed, no officer of the Universal Corporation was ever subpoenaed to appear before the Attorney General, but I have been advised that Mr. Dewi T. Evans, voluntarily appeared before a representative of the Attorney General, on or about December 19th or December 20th; and on that date said Evans was the Secretary and Treasurer of Universal Finance Corporation.

22. Referring to the various allegations in paragraph 10 of the bill, deponent says:

(a)

The defendant, Universal Finance Corporation has not broadcast sales talks within this State or elsewhere over the radio from station WABC or any other station; on the contrary all broadcasting was done specifically in the name of Financial Investment Corporation and in no place in any of the broadcast talks contained in Exhibit D-2, is the name of the defendant Universal Finance Corporation announced or referred to.

The sales talks referred to were over a station known as WABC, which is located in the Steinway Hall, West 57th Street, New York City and station WAAT which is located in Jersey City.

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I have examined the copies of the sales talks which formed part of the bill of complaint, as Exhibit D-2. According to the best of my recollection these copies are correct.

The quotation therefrom in sub-head "a" of paragraph 10 was part of a sales talk which was broadcast shortly after December 12th. Said quotation, insofar as it relates to the proposed advance in dividends, from 10% to 12% is incomplete, for the reason that in the same sales talk it was specifically stated "commencing January 1st, 1929, the shares will be on a 12% dividend basis."

As a matter of fact, the prices of the shares which had previously been offered at $15.00 had been advanced to $16.00 a share about a week prior to the date of said broadcast to become effective as of December 12th. This was pointed out in another broadcast a few days prior to December 12th as is shown at page 39 of Exhibit D-2.

On or about December 5th, the directors of Universal Finance Corporation had voted to increase the present dividend from 10% to 12%, effective January 1, 1929, and that said dividend would be paid in equal monthly amounts of 1% a month. By the same resolution, the directors ordered that the price of the shares should be advanced from $15.00 to $16.00 to take effect on December 12th, 1928, and this action of the Board was set forth in detail in one of the radio talks shortly prior to December 12th, 1928, as quoted at page 39, and instructions accordingly, with a copy of the resolution of the Board, were given by Universal Finance Corporation to Financial Investment Corporation.

In none of the radio talks was it ever stated or suggested that the dividend rate should be on the basis of the selling price as distinguished from the par value, and in all cases where stock subscriptions were made, the subscription stated specifically that the par value was $10.00 per share and was entitled to a preferred cumulative dividend at the rate of 6% per share per year, before any

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dividend on the common stock and that any further amount declared in dividends should be divided equally, among the holders of preferred and common stock. A copy of the subscription contract is annexed to the bill as Exhibit D-7.

All stock certificates that were issued to stockholders provided specifically that the par value of the preferred stock was $10.00 per share and that the holders thereof should be entitled to receive dividends at the rate of Sixty (60c) Cents per share, and that after dividends had been paid on the preferred stock then the directors might declare and pay dividends on both preferred and common—such dividends, however, to be payable equally on both such classes of stock. A sample of the stock certificates that were issued to the preferred stockholders is attached, marked Exhibit "D."

(b)

The quotation from the sales talk in subhead "b" of paragraph 10 is taken from a talk which was broadcast sometime during the month of November. Deponent is unable to fix the exact date as he has not been permitted access to the records of the Company which are in the hands of the Prosecutor of the Pleas of Essex County. The said quotation is from a talk which is given in full at pages 7, 8 and 9 of Exhibit D-2. This talk refers to a branch office which it was planned to open next month.

The Branch Office to which reference is made was in the City of New Brunswick and said office was in fact opened and in operation on or about December 1st.

As a matter of fact, the price of the stock was advanced from $15.00 to $16.00 per share, as per the resolution of the Board of Directors, above referred to.

The quotation from the radio talk in subhead "c" is found on page 8 of exhibit D-2, which as above set forth was broadcast sometime during the month of December.

The quoted statement was strictly accurate; about that time there was being offered for public subscription, 6% cumulative preferred stock that participated up to 50% in the profits; the stock was being offered at $15.00 per share and was then on a 10% dividend basis, payable quarterly; there was nothing said in this radio talk or in any other talk to convey to the prospective purchaser that Universal Finance Corporation was paying a dividend of 10% on the selling price as distinguished from the par value, and as a matter of fact there was no reference in this talk or any other talk to Universal Finance Corporation.

(d)

It is true that from time to time there was included in the broadcast, statements to the effect that the business of the Company whose stock was offered for sale was under the supervision of the New Jersey State Department of Banking and Insurance. As a matter of fact and from the deponent's personal knowledge, and as a matter of law, as deponent is advised, the business of the Universal Finance Corporation, insofar as it relates to the Small Loan Business, under Chapter 49, New Jersey Laws of 1914, has always been under the supervision of said department; and such supervision was actually exercised by the department over that part of the business of said corporation to the extent and in the manner above set forth in detail.

(e)

Referring to the samples of the circulars and pamphlets, attached to the bill of complaint, and referred to in subhead "e" of paragraph 10, there is no statement therein, nor in any other circulars or pamphlets in which there is any statement or representation that the dividend payable to the preferred stock is on the basis of the selling price or prices of said stock.

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The dividends mentioned in the circulars and pamphlets and in the broadcast talks, were in fact paid to the preferred stockholders at the annual rate of 10%, being 6% regular and 4% participating; these dividends were not paid from capital as alleged in the bill, but on the contrary were paid out of the surplus or net profits arising from the business of the Universal Finance Corporation, after conference with public accountants. The balance sheets and other financial details which were before the Board at the time the dividends were declared are set forth in detail in the affidavits of Ralph S. Johns and Dewi T. Evans.

23. Deponent has for more than 3 years last past been engaged in the business as a professional entertainer over the radio and as a manager of professional radio talent and speaker over the radio, using the name of Dale Davis for that purpose and in several states of the Union and over various radio stations has established a business property in that name. Prior to the organization of the defendant, Universal Finance Corporation and its predecessor, Public Service Finance Corporation, deponent was for several months engaged as a professional speaker, under the name of Dale Davis, in radio talks over several broadcasting stations, offering to the prospective investing public, shares of stock in Plaza Loan Society, which is an Industrial Banking Institution, conducting business under the same statute under which Universal Finance Corporation was afterwards formed. As is customary in advertising commodities, securities, philanthropic movements or any other enterprise called to the attention of the public over the radio, the sales talks conducted by deponent were a part of an entertainment program. Deponent has for a long time past, been known in the radio profession and to such part of the public listening in under his professional name of Dale Davis, and locally in the State of New Jersey his name, together with his picture has appeared in the public papers, as is evidenced by a

clipping from one of the prominent Newark daily newspapers hereto attached and made a part of this affidavit and marked Exhibit "F."

24. It has been intimated in the public press and in connection with the matter which is the consideration of this bill, that the name of Davis was used by me for the purpose of pretending to be one Davis who is connected with the Provident Loan Society, an established local small loan company. This deponent takes this opportunty of emphatically refuting any such intent or purpose and in fact here asserts that until after his last broadcasting in connection with the sale of stock of Universal Finance Corporation he had no knowledge that there was such a person as a Mr. Davis connected either locally or anywhere else, with any Industrial Banking Institution.

25. Referring to such of the exhibits attached to the bill of complaint in which the terms "Industrial Banking" or "Industrial Banking Business"; deponent says that these terms were not used with any intent to mislead or deceive any investor or investors or prospective investor or investors, but on the contrary in the firm belief in the propriety of that description of the character of business carried on by a small loan corporation. The term "Industrial Banking" is accepted as a proper description of the character of business of small loan corporation not only in the trade but by some of the foremost banking institutions in the State of New Jersey. In confirmation of this, deponent hereto attaches a photostat copy of a letter from the Trust Company of New Jersey, under date of March 5, 1928, marked Exhibit "G" and made a part hereof, and also a photostatic copy of a letter from New Jersey National Bank and Trust Company of Newark, N. J., dated November 26, 1928, marked Exhibit "H," and made a part hereof.

26. Deponent further says that the radio talks included in Exhibit D-2 were originally prepared by Mr. A. G. Ed-

Exhibit—Not marked. Record in Chancery, Attorney General vs. Universal Finance Corporation, et al.

wards, president of Financial Investment Corporation, the deponent's employer, and some of them were revised and edited by the deponent and some by Mr. D. T. Evans. No one other than the persons here named had anything to do with the preparation and revision of these talks.

(Sgd) DALE DAVIS HOLLENBAUGH.

Sworn and subscribed to me this
1st day of January, 1929.

JOHN J. GAFFEY,
A Notary Public of New Jersey.

Attached to the foregoing affidavit are the following exhibits:

EXHIBIT "A"

Certificate of Incorporation of Public Service Finance Corporation.

EXHIBIT "B"

Amended Certificate of Incorporation.

(Note: The above exhibits are the same as Defendant's Exhibit 19.)

EXHIBIT "C"

Information Rules and Regulations issued by Department of Banking & Insurance.

(Note: This is the same as Defendant's Exhibit 15.)

Exhibit—Not marked. Record in Chancery, Attorney General vs. Universal Finance Corporation, et al.

EXHIBIT "D"

Copy of Certificate of Preferred Stock.
(Note: This is the same as Defendant's Exhibit 4.)

EXHIBIT "F"

Newspaper Clipping.

Exhibit—Not marked. Record in Chancery, Attorney General vs. Universal Finance Corporation, et al.

EXHIBIT G

Letter dated March 5, 1928, from Trust Company of New Jersey to L. M. Coffin.

THE TRUST COMPANY OF NEW JERSEY

Wm. C. Heppenheimer, President
Wm. C. Heppenheimer, Jr. Vice President
Edwin H. Stratford, Vice Pres., Secy. & Treas.
Walter Meixner, Vice President
William C. Veit, Asst. Secy. & Asst. Treas.
Henry C. Parley, Comptroller.
J. William Grimminger, Trust Officer
Charles E. Clifton, Asst. Trust Officer.

(ON LETTERHEAD
(THERE APPEARS
(ENGRAVING OF
(PICTURE)

Peoples Safe Deposit Branch, Central Ave. & Bowers St., Jersey City.
Bergen & Lafayette Branch, Monticello Ave. & Brinkerhoff St., Jersey City
HOBOKEN BRANCH
12-14 Hudson Place, Hoboken.
TOWN OF UNION BRANCH
Bergenline Ave. & Hackensack Plank Road, Union City.

Main Office
Journal Square
Jersey City, N. J.

March 5, 1928.

L. M. Coffin, Esq.,
1179 President Street,
Brooklyn, N. Y.

Dear Sir:

In reply to your letter of March 3, we wish to state that the Plaza Loan Society, Inc., of Jersey City has maintained an account with us since May 1926. The company is engaged in the Industrial Banking business, making loans to individuals in amounts running up to $300 secured

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by chattel mortgages or endorsements. In order to expand the company is now selling preferred stock. We have granted liberal loans on the corporation's note endorsed by its officers, whom we hold in high regard. Our relations have been satisfactory and we believe that the company is entitled to our confidence.

Very truly yours,

(Signed) Walter Meixner,
Vice President.

EG:GBK

CONFIDENTIAL.—This letter is sent on the following conditions:

It is a strictly confidential reply to your request. The statements therein are to be treated as mere opinions or information, and neither this bank nor any of its representatives are to be in any way responsible therefor or liable for negligence or other causes in connection with the making of said statements.

EXHIBIT "H"

Letter November 26, 1928, To Whom It May Concern from Assistant Vice President, N. J. National Bank & Trust Company.

(Note: This is the same as Defendant's Exhibit 22 for Iden.)

(Affidavit of Rawls Hampton)

Deposes that he is a radio announcer and performer; knows Hollenbaugh; and introduced him at Station WABC; customary for radio performers to be introduced by their professional names.

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(Affidavit of Ina Grange)

Deposes she is a concert pianist and vocal coach; was staff pianist at WABC; knows Hollenbaugh; customary for radio performers to appear under their professional names.

Affidavit of Dewi T. Evans.

STATE OF NEW JERSEY, } *ss.*
COUNTY OF ESSEX. }

DEWI T. EVANS, of full age, being duly sworn according to law, on his oath deposes and says:

1. I reside at Trenton, New Jersey and for about fifteen years prior to December 31, 1928, have been employed in the office of the Attorney General of the State of New Jersey, for about one and one half years, and prior to that time was employed in the office of the Comptroller of said State for a period of about thirteen and one half years.

During my employment in the Attorney General's office I held the position of State Examiner in the Division of Securities.

During this period of fifteen years my special work has been financial accounting; and when in the Attorney General's department, the examination of securities.

2. At the time of the organization of the Public Service Finance Corporation, on March 24, 1928, I became one of the incorporators and subscribed for 35 shares of preferred stock and 35 shares of common stock, as shown by the certificate of incorporation. I am still the owner of said 35 shares of preferred stock and later became the owner of additional shares of common stock so that at the present time I hold 333 shares of common stock.

Exhibit—Not marked. Record in Chancery, Attorney General vs. Universal Finance Corporation, et al.

3. At the first meeting of the corporation I was elected treasurer and have held that office continuously to the present time; in June of 1928, one, Tappan who had been serving as secretary, resigned and on the acceptance of his resignation, I was elected secretary and have since held that office as well as the office of treasurer.

4. The Public Service Finance Corporation was organized under the general laws of the State of New Jersey for the purpose of engaging particularly in the business of making small loans under the provisions of Chapter 49, Laws of 1914, and since its organization has engaged exclusively in said business, except as from time to time, as incident to said business, it has purchased out of its surplus certain securities as hereinafter set forth.

5. As treasurer of the corporation and thereafter as secretary and treasurer, I was at the corporation's place of business in Newark, practically every business day since its organization and have been continously and in close touch with its business. When the corporation opened business, its office was located in the National State Bank Building, at 810 Broad Street, Newark; on or about July 1st, 1928, the offices were moved to the third floor of the building on the southwest corner of Broad and Market Streets, known as 789 Broad Street, for which office the company executed a lease for a period of eight years at a rental for the first year of $3,000., for the second year $3,600., and the third year for $4,000., this rental gradually increases for each of the following years during the period of the lease, but I do not now recall the exact amount of the increases, as the original lease and all copies were taken with the other papers of the corporation, by the Prosecutor of the Pleas of Essex County on the 26th day of December, 1928, and I have not been permitted to examine same since that date.

6. A few weeks after the organization of the corporation, the firm of Haskins & Sells, certified public account-

ants, was employed to prepare a general audit and one or more representatives of that firm were continuously engaged in preparing such audit for a period of about two months, beginning early in June. This audit covered the period from the time of the organization of the corporation up to June 30, 1928. This audit was made at the request of the Board of Directors. The agreement was that the general audit should cover a period up to June 30th, and that thereafter said firm should examine the books at least once a month and prepare all financial statements and records and install an approved bookkeeping system for small loan companies. Such system was installed in accordance with the direction of said firm of accountants and a representative of said firm has continuously been in the office of the company for a period of about one week of each month and has in fact prepared the statements and reports in accordance with that arrangement, and on such occasions has checked and supervised the books and records of the corporation.

7. As a result of the general audit made by said firm, the balance sheet (Exhibit D. 13) attached to the bill of complaint, was prepared and certified to by said firm, except that said balance sheet did not include the following paragraph of the note at the foot thereof:—

> "The above statement does not include accrued interest and dividends receivable on securities held at June 30, 1928 ($168,661.29) and value of rights accrued to June 30, 1928."

The quoted paragraph was added by me to said balance sheet when the same was presented to Mr. Plumer, Special Assistant Attorney General, on or about December 19, 1928; the facts therein stated are correct, as said sheet did not in fact include the accrued interest and dividends on said securities, which as shown in the list of assets on said balance sheet, amounted at that time to said sum of $168,661.29.

Exhibit—Not marked. Record in Chancery, Attorney General vs. Universal Finance Corporation, et al.

As of June 30, there had accrued on said securities dividends amounting to the sum of $165.00 as set forth in detail in the affidavit of Ralph H. Johns.

The "rights" referred to in said paragraph, were the following:

(a) The right to subscribe to new shares of American Exchange Irving Trust Company, on a basis of one new share for each 4 shares held; which would be 2½ new shares. The value of said rights as of June 30, 1928, was $52.50.

(b) The right to subscribe to new shares of the American Telephone and Telegraph Company, on the basis of one share for every six shares held; that is 4 1-6 shares; the value of said rights as of June 30th was $49.48.

(c) The right to subscribe for new shares of New York Central Railroad Company stock on the basis of one share for every 10 shares; the value of said rights as of June 30th, was $15.94.

(d) The right to subscribe for new shares of Guaranty Trust Company of New York, on the basis of one new share for each three shares held; the value of said rights as of June 30th, was about $600.

8. Said balance sheet—Exhibit D-13—shows that as of June 30, 1928, the total of the industrial loans then outstanding, amounted in the sum of $10,110. The first of such loans were made in the early part of May 1928. Without reference to the books, which are not now available, I cannot tell exactly the accrued interest on said loans, but a fair estimate of the period of the loans, as set forth in said balance sheet, would be about one month for each loan and a fair estimate of the amount of the accrued interest thereon, as of June 30th, 1928, would be about $250.

Exhibit—Not marked. Record in Chancery, Attorney General vs. Universal Finance Corporation, et al.

9. Said balance sheet refers to a schedule known as "Schedule 1". The photostatic copy of said schedule as attached to the affidavit of Mr. Johns correctly states the securities owned by the company as of June 30, 1928.

The first dividend of the corporation was declared at a meeting of the Board of Directors held June 14, and was payable on July 2, to stockholders of record as of June 20th, amounting to the sum of $1208.75.

At the time this dividend was declared the Board had before it the list of securities shown by Schedule 1, which was the same on June 16th, as on June 30, 1928. These securities paid interest or dividends at an average rate of about 5 percent which would amount to about $8,250 for one year. All of these securities had been purchased on May 15, and from that date to June 30th, would be a period of six weeks, or one eighth of a year, so that the yield on said securities for said time would be about $1030.

This fact was called to the attention of the Board of Directors before said dividend was declared and was one of the matters which was considered by them in deciding to declare such dividend.

Other matters which were considered by said Board, were the value of the rights on said securities, as above set forth, and the amount of the accrued interest on loans, as above set forth.

Another fact before the Board on said date was that the offices that were then occupied by the corporation were also occupied by the Public Service Sales Company, which at that time was the selling agent for the stock of the corporation; and under the temporary arrangement then in existence, the Universal Corporation had not been, and, for the remainder of the month of June, 1928, would not be, under any overhead expense such as rent and clerical help.

The corporation also had on hand, on June 14, 1928, a surplus arising from premiums on sales of preferred capital stock amounting to the sum of about $4,000.

10. A second dividend was declared in the month of September payable September 30th to stockholders of record September 20th, amounting to the sum of $2476.20. At the time this dividend was declared the Company had outstanding the sum of $41,387.61 in loans on which there was accrued interest of about $600., during said month there was a profit on the sale of securities amounting to $2857.00. There was also available for dividend purposes interest on bonds amounting to the sum of $158.34, dividends on stock amounting to $470.88, and the further sum of $533.99 as interest that had been received on loans during the month of September.

According to my recollection as to the amount the books show as of September 30th, there was a net profit to the stockholders during that month of $1804.99, but this amount did not include said sum of $600, above mentioned as due for interest on industrial loans; this amount if added to said balance would make a total of about $2400.00. Said "operating profit" also took into consideration an item of $275.00, which was a reserve for interest to be paid in the future by the corporation on collections of stock subscriptions—which amount was not due on September 30th but fell due from time to time thereafter. The said balance sheet also included a number of items for depreciation of furniture, fixtures, etc., as an accounting proposition, although in fact there was no change in the actual value thereof during said month; these depreciation figures, according to my best recollection amounted to about $100.00.

11. There was also, as of September 20th, a surplus arising from premiums on sales of preferred capital stock, amounting to the sum of about $6,000; this figure is based on my best recollection as I can not give it exactly without an examination of the books.

Exhibit—Not marked. Record in Chancery, Attorney General vs. Universal Finance Corporation, et al.

12. On October 31, there was a very substantial increase in the amount of loans. According to my copy of the company records, the total loans amounted to $61,848.26, and the cost of the marketable securities which were then on hand, amounted to $152,682.66.

13. The annual report of the corporation as filed with the Commissioner of Banking and Insurance was prepared by Haskins & Sells from the books of the corporation—Exhibit D-14 attached to the bill of complaint; and was verified and filed by the officers of the Company after having been so prepared.

14. It was the practice of the Company to make a daily cash report, showing the number of loans outstanding each day, and the money received, etc. The form for this report was prepared by Haskins & Sells. I find among my papers a copy of the report as of December 21, 1928, which shows the loans on that date amounting to $99,721.04. A photostatic copy is attached to this affidavit as Exhibit "X".

15. During my employment by the State of New Jersey, I have from time to time had occasion to become familiar with Industrial Loan Companies and their reports; according to my experience such companies ordinarily take a year before the loans amount to as much as $100,000.

16. Referring to D-14, an item appears therein of profit and loss surplus, amounting to $1510.65; this is on the assumption that June 30th was to be taken as the close of the period of organization. Such assumption was entirely arbitrary, and in view of the fact that on June 30th there was only about $10,000.00 in use for loan purposes, and in view of the further fact that additional capital was raised from time to time for several months following June 30th, it would be in accord with sound principles of accounting, to defer a portion of the organization expenses beyond that date. In my judgment as

an accountant, the date of August 31st, would be reasonable to take as the end of the organization period, and if such date were taken, instead of the date of June 30th, "the loss from operations" for said two months should be added to said sum of $1510.65. The books show that said losses for the months of July and August amounted to the sum of about $2200.00, so that on this basis the profit and loss surplus as of November 30th would amount to about $3700.00.

17. If the corporation had treated as an expense such interest items only when paid, there should also be added to this profit and loss surplus, as a matter of accounting, the item which appears on Exhibit D-14, as accrued interest on stock subscription collections, the sum of $1781.10, so that the total profit and loss, as of that date, would be about $5400.00.

18. On or about December 5th, a dividend was declared on the preferred stock of 6% regular and 4% participating. On November 30th, the number of full paid shares of capital stock was 16,658 shares, and during the few days between that date and the date when the dividend was declared, some additional shares of preferred stock became full paid. Deponent cannot give the exact number without reference to the books, but a fair estimate thereof would be about 17,000 shares of such stock.

The dividend that was declared on December 5, was payable to stockholders of record as of December 20th; on the latter date the number of shares of preferred stock did not exceed 18,000, according to my best recollection. If all of said shares were entitled to the full dividend rate, the amount required to pay said dividend at 2½% would be $4,500.00.

19. As above set forth, the Company already had on hand, as of November 30th, a profit and loss surplus amounting to about $5,400.00 which was more than enough

to pay this dividend, without taking into consideration at all the fact that a large number of shares of stock would not be entitled to the full amount of the dividend but only to a pro rata amount, according to the dates when the several shares became fully paid.

20. In addition to said profit and loss surplus of $5400.00, the Company also had on hand at the time the dividend was declared, a profit of about $5,300.00 which was derived from the sale of securities between November 30th and December 5th; and at that time other securities owned by the Company showed a substantial paper profit and said securities if sold (as was intended by the directors) would have shown a still larger amount actually on hand which would have been available for dividends.

21. Exhibit D-14 shows in the list of assets "Investments at cost" amounting to $109,253.28.

I have in my possession a memorandum which shows the details of these investments. By reference to this memorandum I find that these investments were as follows:

50	shares	Southern Railway Company
25	"	New York Central RR Co.
25	"	Pullman Company
100	"	Standard Oil Co. of California
25	"	American Telephone & Telegraph Co.
50	"	Standard Gas and Electric Co.
50	"	Continental Insurance Co.
25	"	Westinghouse Electric & Mfg. Co.
50	"	Standard Oil Co. of Indiana
50	"	American Superpower Corporation—A
500	"	Lion Oil Refining Co.
55	"	Hanover Fire Insurance Co.
10	"	Guaranty Trust Company
10	"	Hanover National Bank
12	"	American Exchange Irving Trust Co.
10	"	National City Bank of New York.

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22. In the month of October, the firm of Haskins & Sells was engaged to make a general audit of the books of the Company as of December 31, 1928. As part of this general audit, said firm was directed to prepare a balance sheet and a statement of income and profit and loss, which was to be sent to all stockholders.

Said firm was also engaged to compute the December dividend above referred to, and the representative of said firm was at the office of said Company engaged in the examination of the books and records of said Company when same were seized by the Prosecutor of the Pleas of Essex County.

DEWI T. EVANS.

Sworn and subscribed to before me this
2nd day of January, 1929.

JOHN J. GAFFEY,
A Notary Public of New Jersey.

Attached to the foregoing affidavit is Exhibit "X" which is a daily report of December 21, 1928 of cash balance receipts, disbursements, bank balances, and industrial loan balance.

(Affidavit of Alexander Gordon Edwards.)

STATE OF NEW JERSEY,
COUNTY OF ESSEX. } *ss.*

ALEXANDER GORDON EDWARDS, of full age, being duly sworn, according to law, on his oath, deposes and says:

I reside at 208 East Third Avenue, Roselle, New Jersey, and have lived in the State of New Jersey all my life.

I am the President of Financial Investment Corporation, one of the above named defendants, and have been

Exhibit—Not marked. Record in Chancery, Attorney General vs. Universal Finance Corporation, et al.

such ever since the organization of the Company. Prior to the incorporation of this defendant company I did business under the name of Public Service Sales Co., being a registered trade name and was engaged in selling stock of the defendant, Universal Finance Corporation, then known by its original corporate name, Public Service Finance Corporation.

So far as I know, all the stock of Universal Finance Corporation sold, either fully paid or on partial payment plan, was sold either by me under the registered trade name above referred to, or by the defendant corporation Financial Investment Corporation; and this selling covered a period from about March 1928, until December 24, 1928.

All my sales were made under written contracts on the uniform commission basis of 25% of the sales price per share, and to the best of my recollection there were four such contracts. I am unable for greater certainty to refer to the written instruments, for the reason that the office of the Prosecutor of the Pleas of Essex County took possession of all books, records, and original papers belonging to Financial Investment Corporation and has refused to surrender the same. The sales prices of this stock under the different contracts ranged from $14. per share to $15. and $16. per share of $10. par value, and in consideration for receiving from the Universal Finance Corporation the exclusive right to offer for sale the stock under the last contract at the price of $16. my company agreed to pay to Universal Finance Corporation the sum of $20,000. giving its promissory note for that sum to said Universal Finance Corporation. The effect of such payment of $20,000. would have reduced the commission percentage on this block of stock to approximately 18¾%.

I had the general supervision of the affairs of Financial Investment Corporation and respecting the radio talks contained in Exhibit D-2 attached to the bill of complaint, I originally drafted them; and for them as they now

appear in said exhibit, the result of conferences between Mr. Hollenbaugh, Mr. Evans and myself, I assume full responsibility and no one else other than above named had anything to do with their compilation or broadcasting. The other literature, such as circulars, subscription contracts and advertisements, likewise came under my personal supervision. As to the instruction of and supervision over the various salesmen employed by Financial Investment Corporation, I did not personally attend to that. Mr. Charles Perry, who is the secretary of Financial Investment Corporation, had the personal management and control of the salesmen of the company.

By Schedule "A" filed with the bill of complaint herein, reference is made in my testimony therein to my using the name Alexander Gordon as a radio speaker selling stock; my explanation is contained on page 39 of said Exhibit "Schedule A" and I desire hereby to emphasize that the use of a radio name by me was not for any purpose of concealment or deception, but on the contrary, so that persons listening in and knowing me under my full name would not be thereby influenced to invest rather than taking the proposition impersonally and upon its merits.

I have never misrepresented any fact in connection with broadcasting the offer which my corporation had to make either of the stock of Plaza Loan Society, or Universal Finance Corporation, and this either as to sales prices or dividend percentage or yield.

When the sale of Universal Finance Corporation stock by my corporation first received publicity, Universal Finance Corporation, by a resolution of its Board of Directors, informed my corporation, Financial Investment Corporation, of the cancellation of the contract theretofore made for the sale of the stock at $16. per share. This was on December 24, 1928, and on the same day Financial Investment Corporation assented to this cancellation and

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I wrote a letter to Hon. Richard C. Plumer, advising him of the facts in this respect.

I have personally no interest either as a stockholder or as an officer in Universal Finance Corporation and have never had any control of that corporation or endeavored to exercise any control over its management and affairs. My interest and profit came from my participation in the earnings of Financial Investment Corporation. It is, however, a fact that members of my family, including my sister-in-law and my mother, are stockholders and as the common stock issue at present stands, they have a controlling voting interest through the common stock.

I employed Mr. Hollenbaugh to broadcast for me over various stations while I was selling the stock of Plaza Loan Society and instructed him to use the name Dale Davis which I know to be his professional broadcasting name and believe from my experience that the use of that name had a selling value. In the use of this name Dale Davis, or Mr. Davis, there was never any intention to mislead or deceive anyone and until after all radio addresses had ceased and likewise all sales of stock had ceased, I never knew that there was a Mr. Davis connected with any small loan company, industrial banking or other banking institution in the State of New Jersey or anywhere else.

So far as the financial condition of Financial Investment Corporation is concerned; there is no stock of that company in the hands of the public and the corporation is entirely solvent and at the present time has on deposit in cash with the Fidelity Union Trust Company of Newark, approximately $8,000. Against this amount the corporation does not owe in excess of $3500. represented by trust funds held and by all other indebtedness of the company.

As appears by the certificate of incorporation of this company, a copy of which is hereto attached, made a part of this affidavit and is marked Exhibit A, the authorized

capital stock of the corporation is 1,000 shares of common stock without nominal or par value. Of this authorized stock only ten shares have ever been issued, of which deponent holds eight shares and the other two shares are respectively, held by the other two directors of the corporation.

(Sgd) ALEXANDER GORDON EDWARDS.

Subscribed and sworn to at Newark N. J.
this 1st day of January, 1929, before
me,

JOHN J. GAFFEY,
A Notary Public of New Jersey.

Attached to the foregoing affidavit is a copy of the Certificate of Incorporation of Financial Investment Corporation—marked Exhibit "A".

(Note: This is the same as Defendant's Exhibit 26.)

(Affidavit of Herbert E. Foster.)

STATE OF NEW JERSEY,
COUNTY OF ESSEX. } *ss.*

HERBERT E. FOSTER, of full age, being duly sworn, according to law, on his oath, deposes and says that he resides in the City of Newark and is the person referred to in the affidavit of Irene Nolin, made in the above entitled cause, dated December 17, 1928, and further deposes and says:

On or about the eleventh day of December, instant, I received from the office of the Financial Investment Corporation a card of inquiry signed Pierre Nolin and went to the address thereon indicated. This was in the morning of December 11th and at No. 123 Belmont Place in Irving-

Exhibit—Not marked. Record in Chancery, Attorney General vs. Universal Finance Corporation, et al.

ton I met a lady who told me that her name was Nolin and that she was the wife of the person in whose name the inquiry had been made. I very briefly explained to her the proposition which I had to offer in connection with the sale of the preferred stock of Universal Finance Corporation which I was selling as a salesman employed by Financial Investment Corporation. The lady told me that she would have to take it up with her husband, who was employed by the Public Service Corporation as a lineman, and having been told that her husband would be home in the evening, I returned to the same address about 9:15 that same evening. At this time I met the same lady to whom I had talked in the morning, a man who was presented to me as her husband, another gentleman who was presented to me as her brother-in-law, and another young man who was presented as a friend of the family and there, to all of these persons, I explained in detail the nature of the stock offer which my company was making.

In the short talk which I had with Mrs. Nolin in the morning, she told me that she knew about small loan companies because at one time she and her husband had loaned some money to her brother-in-law and that it took two years to get it back and they received no interest on it, and that thereafter when this same brother-in-law wanted to make another loan they sent him to a small loan company which, to the best of my recollection, was indicated as being located on Central Avenue in the City of Newark.

I have read the affidavit made by Irene Nolin in which, among other things, she stated that I represented that the stock had been originally sold at $10.00, but that because of the high earnings of the corporation it was then selling for $15.00; Mrs. Nolin is in error when she says that I ever made the statement that the stock had been sold at $10. because such is not the fact, so far as my knowledge goes, and on the contrary, I am informed that not even persons associated with the company for which

I work have been able to buy the stock at a less price than it has netted to the Universal Finance Corporation which from the very beginning was more than $10.00. My explanation of Mrs. Nolin's reference to a $10.00 price is that I told her that the par value of the stock was $10.00 and that the yield was figured on that basis and that on the selling price of $15.00 per share, would bring a yield of 8%, when the dividend rate had increased to 12% I did say to Mrs. Nolin and to those who were present on the evening of the eleventh of December that the selling price of $15.00 per share was due to the high earnings of a corporation engaged in the small loan business.

I deny that I ever told Mrs. Nolin that either Universal Finance Corporation or Financial Investment Corporation were doing a banking business; but I did use the term "industrial banking business" in connection with my explanation that this was a small loan company whose stock I was offering for sale; and in support of that statement at that time, produced a photostatic copy of a letter signed by Parker W. Silzer, Assistant Vice President of the New Jersey National Bank & Trust Company, Newark, New Jersey, a copy of which is hereto attached, made a part of this affidavit and is marked Exhibit "A". At the time of the second interview with Mrs. Nolin she made notes of the explanations given by me and copied from the above letter (Exhibit A) the last paragraph, having first asked me whether she could have the letter itself, and being informed by me that I could not let her have this letter as I used it for sales purposes in my business.

Further in explanation of the use of the term "industrial banking business" I explained that this small loan company loan out its money the same as a bank does, but that it had no authority to take deposits, etc., as banks did, and explained the dissimilarity between a prosperous small loan corporation and money invested in a building & loan association by explaining the difference in the manner of participating in profits. I told Mrs. Nolin

Exhibit—Not marked. Record in Chancery, Attorney General vs. Universal Finance Corporation, et al.

and the others present, as above indicated, that upon an investment in the stock of the Universal Finance Corporation the participation up to 50% of the profits over and above the 6% declared on the preferred stock continued year after after year, so long as the increased profits warranted the declaring of such participating dividends.

I did refer to the personnel connected with Universal Finance Corporation and did speak of Mr. D. T. Evans as a director and said that he was well known and competent as an investigator in connection with the Bureau of Securities at Trenton, and that he was the character of man who would not permit his name to be used in connection with any enterprise that was questionable. At this time I also referred to the fact that the firm of Haskins and Sells, recognized as one of the leading certified public accountants in the country, were the auditors of the Universal Finance Corporation and expressed the opinion that if the concern of the stock I was selling was not O. K., Haskins & Sells would not permit their name to be used as auditors, I also told Mrs. Nolin and those present, as above stated, that the Universal Finance Corporation was under the supervision of the Department of Banking & Insurance of New Jersey.

On December 12th, in the evening, I again called at the home of Mr. and Mrs. Nolin and met them both, having previously told Mrs. Nolin to listen in on the radio and she could hear what was being said about the proposed advanced price of the stock. There was some talk about investigations that were going on and that no complaints had been made about the sale of stock by the Financial Investment Corporation. It is also true that there was a request made of me for a balance sheet and that I did tell Mrs. Nolin or her husband, or both, that after the first of the year she could have such a balance sheet, which I had been told was then being made up for all of the stockholders.

Exhibit—Not marked. Record in Chancery, Attorney General vs. Universal Finance Corporation, et al.

On the occasion of my visit to the home of Mrs. Nolin on December 12th, she told me that she had talked this matter over with her father and that he had said if she had any money to invest to let him have it and he would pay her as much as she could get from anyone else. Knowing that on the following day the price at which this stock was to be offered for sale would advance to $16.00 per share, I told Mr. and Mrs. Nolin about this and tried to get them to take thirty shares of the stock on a partial payment plan, paying $150.00 down and extending the partial payments, if they chose, over a period of twenty months. This subject was gone into at length and I further explained that on all moneys paid in they would get 4% interest until the entire amount of the stock subscription had been completed, and I then agreed that if, after they saw the balance sheet after the first of the year and were dissatisfied, that I would pay back the $150.00 personally.

There was no misrepresentation by me in any respect or particular and as to the statement that on the following day, namely, December 13th, the price would be advanced to $16.00 per share, that statement was not only made in good faith but was a statement authorized by my superiors and, in fact, carried out; for after December 12th I never again was permitted to, nor did I ever offer any of this stock for sale at the price of $15.00. On the contrary, I solicited uniformly at a price of $16.00 per share and in fact made sales myself at that price and know of other sales made by other salesmen after December 12th at the rate of $16.00 per share.

On the 19th day of December, 1928, I sold to Nick Mortali, 2985 Paine St., Bronx, N. Y. 10 shares of the stock of Universal Finance Corporation at $16.00 per share, and on the 19th day of December, 1928, I also sold to one, Gariano, whose first name I cannot recall but who is the brother-in-law of said Mortali, 20 shares of this same stock, at $16.00 per share. Both of these transactions

were carried through by me in the ordinary course of business both were genuine sales and the same representations were made as in all of my sales and efforts at selling this Universal Finance Corporation's stock. After December 12th I was obliged to refuse a subscription for this stock at an offer of $15.00 per share from Charles L. Roome, living at 1125 Crawford Terrace, Union, New Jersey. The applicant insisted that he was entitled to the $15.00 price because he had sent his letter to the company before the price was raised to $16.00. The letter to which this prospective buyer refers is hereto attached, made a part of this affidavit and is marked Exhibit "B". I could not sell this customer at $16.00 per share because he insisted on the right to buy at $15.00.

(Sgd) HERBERT E. FOSTER

Subscribed and sworn to at Newark, N. J., this 31st day of December 1928, before me

JOHN J. GAFFEY,
A Notary of New Jersey.

(Affidavit of Alfred H. Llewelyn.)

STATE OF NEW JERSEY,
COUNTY OF ESSEX. } *ss.*

ALFRED H. LLEWELYN, of full age, being duly sworn, according to law, on his oath, deposes and says:

I reside at No. 108 Chester Avenue in the City of Newark. I am one of the salesman employed by Financial Investment Corporation, one of the defendants above named and worked for them as the stock salesman for about six months and was engaged part of that time in offering for sale on behalf of my employers the stock of the Universal Finance Corporation, the other defendant above named.

Exhibit—Not marked. Record in Chancery, Attorney General vs. Universal Finance Corporation, et al.

At no time have I ever represented the Universal Finance Corporation as doing the business of a bank, but have used the term "industrial banking" which was known to me as a trade name for the character of business carried on by small loan companies.

In representing this as "industrial banking" I used a copy of a letter identical with that which has been shown me as marked Exhibit A attached to the affidavit of Mr. Foster.

With respect to the dividends paid by this company, I have never represented that the 10% dividend was paid on the purchase price of the stock, but have at all times been particular to explain that this was on the par value of the stock and that the purchaser would have the advantage of any increase in the participating dividend in the future.

Personally I never solicited any subscriptions at $16.00 per share, for the reason that I had, up to the time that my employment ceased through the suspension of the business of the company, sufficient prospects to whom the privilege of buying at the old rate had been reserved by me, and in view of the fact that I had worked on these prospects before the price of $16.00 was fixed, I was permitted by my company to go on and see if I could close those prospects up at that price.

At the request of the Prosecutor of the Pleas of Essex County I made a statement concerning the subject matter of his inquiry and the facts herein stated are entirely consistent with that statement.

Except as a salesman, I am not interested in either of these companies as a stockholder or otherwise.

(Sgd) ALFRED H. LLEWELYN,

Exhibit—Not marked. Record in Chancery, Attorney General vs. Universal Finance Corporation, et al.

Subscribed and sworn to at Newark,
N. J. this 1st day of January, 1929,
before me

JOHN J. GAFFEY
A Notary Public of New Jersey

(*Affidavit of Richard A. Libonati.*)

STATE OF NEW JERSEY,
COUNTY OF ESSEX. } *ss.*

RICHARD A. LIBONATI, of full age, being duly sworn according to law, on his oath deposes and says:

I reside at No. 37 William Street, Orange, New Jersey, and am one of the stockholders of the Universal Finance Corporation, one of the defendants named in the above entitled cause. I purchased my stock through a salesman of the Financial Investment Corporation and bought this stock about October of this year. The name of the salesman is Alfred Llewelyn. I paid Fifteen Dollars ($15.00) per share and bought 25 shares outright and 5 shares on partial payment plan.

At the time I purchased this stock it was made entirely clear to me that the dividend of 10% was not on the amount of the purchase price but payable on the par value of $10.00 per share. There was never any misrepresentation to me that I was buying the stock of a bank or that this company was engaged in the banking business other than as a small loan corporation lending out money in small sums at 3% a month.

I bought this stock as an investment and am satisfied that it is a good investment and will continue to be so if the company is honestly run. I can not see how the appointment of a receiver could be otherwise than harmful to me as a stockholder.

Exhibit—Not marked. Record in Chancery, Attorney General vs. Universal Finance Corporation, et al.

I have known Mr. Llewelyn, who sold me this stock for about one year and believe him to be a truly reputable man who would not engage in any misrepresentation in his business actions.

(Sgd) RICHARD A. LIBONATI

Subscribed and sworn to at Newark, New Jersey, this 31st day of December, 1928, before me.

AUGUSTINE J. KELLY
An Attorney at Law of New Jersey.

(*Affidavit of Charles H. Eastabrooks.*)

CHARLES H. EASTABROOKS, of full age, being duly sworn, according to law, on his oath, deposes and says:

I reside at No. 228 Osborne Terrace, in the City of Newark. I am a salesman employed by Financial Investment Corporation and was employed as a salesman by the predecessor of this company which was known as Public Service Sales Company. My employment began in the month of April, 1928, and I have continued throughout the entire time since, in the above employment.

I have never, directly or indirectly, represented to anyone that Universal Finance Corporation, or Financial Investment Corporation were engaged in general banking business. I have employed the term "industrial banking", this being known to me as trade name for the business of small loan companies. In explaining to my customers the nature of the business transacted by the Universal Finance Corporation whose stock I was selling, I made use of and exhibited copy of a letter issued by the Trust Company of New Jersey, dated March 5, 1928, and also a photostat copy of a letter issued by New Jersey

Exhibit—Not marked. Record in Chancery, Attorney General vs. Universal Finance Corporation, et al.

National Bank & Trust Company, Newark, N. J., dated November 26, 1928.

I have never, directly or indirectly, represented to any purchaser of the stock of Universal Finance Corporation or to any prospective purchaser that the 10% dividend paid on that stock was paid on the purchase price; but on the contrary, I have at all times represented that this dividend was paid and that future dividends, when paid, were and would be on the par value of $10.00 per share.

Just prior to December 12, 1928, I received instructions from my employers that after December 12th the sales price of the stock would be $16. and after that date I never solicited any customer on any other basis than $16. per share.

During my employment I have sold more than a thousand shares of this stock, all of my sales being in the State of New York. More than half of the shares of stock which I sold were sold on the partial payment plan and in some instances I sold some customer more than once. From none of my customers have I ever had a complaint as to the representations made by me or by the company, and so far as I know no complaint of any of my sales have ever come to the company. Many of my customers purchased and paid for their stock prior to the June and September dividend payments and their dividends were paid on a basis of 10% on the par value of the stock.

(Sgd) CHARLES H. EASTABROOKS.

Subscribed and sworn to at Newark, N. J.
this 1st day of January, 1929, before
me

JOHN J. GAFFEY
A Notary Public of New Jersey

Exhibit—Not marked. Record in Chancery, Attorney General vs. Universal Finance Corporation, et al.

(Affidavit of Homer G. Angle.)

STATE OF NEW JERSEY,
COUNTY OF ESSEX.

HOMER G. ANGLE, of full age, being duly sworn, according to law, on his oath deposes and says:

I reside at 120 Bremond Street, in the town of Belleville, County of Essex and State of New Jersey.

I am one of the salesmen employed by Financial Investment Corporation and as such sold stock of Universal Finance Corporation.

In the course of my talks with prospective purchasers, I have used the term "Industrial Banking" but have never represented to any person that either Universal Finance Corporation or Financial Investment Corporation were engaged in general banking business.

In representing to prospective purchasers and of those who actually purchased stock through my efforts I have at all times carefully explained that the dividend of 10 percent was paid on the basis of the par value of the stock and that this stock carried a preferred dividend of 6 percent and a participating dividend up to 50 percent whenever declared over and above the 6 percent cumulative dividend.

I sold these shares of stock to members of my own family and personal friends and have never made any representations to strangers whom I solicited other than above indicated and likewise represented by me to the said members of my family and my personal friends.

I state from my own knowledge and instructions received from my employer, that after December 12, 1928, no further subscriptions for the stock of Universal Finance Corporation were to be taken at the $15.00 price and that from thence on the sales price would be $16.00 until further notice.

Exhibit—Not marked. Record in Chancery, Attorney General vs. Universal Finance Corporation, et al.

I have lived in Trenton, New Jersey, most of my life and for many years have known Mr. Dewi T. Evans and it was through his recommendation that I was employed by Financial Investment Corporation. In the course of my work, I had nothing whatever to do with Universal Finance Corporation, or its officers or employees, but received all of my instructions from the officers of Financial Investment Corporation.

I have sold approximately 1000 shares of the stock of this company in the State of New Jersey, State of Connecticut and State of New York and the majority of these sales were made on partial payment contracts. I have never had a complaint from any of the persons to whom I sold this stock, and in some instances I have made second and third sales to some of my customers.

(Sgd) HOMER G. ANGLE

Subscribed and sworn to at Newark,
N. J., this 1st day of January, 1929
before me

JOHN J. GAFFEY
A Notary Public of N. J.

Exhibit—Not marked. Record in Chancery, Attorney General vs. Universal Finance Corporation, et al.

ORDER MODIFYING RESTRAINT

Filed January 2, 1929.

This matter coming on to be heard on the return of the order to show cause allowed herein on December 27, 1928, and affidavits having been filed on behalf of the defendants, and the court having heard the argument of counsel thereon;

It is, on this 2nd day of January, 1929, ORDERED that the restraint in said order to show cause be modified as follows:

The said defendants and each of them, pending the decision of the court on the order to show cause are permitted:

(a) To pay any debt or debts for rent, office hire and ordinary running expenses now due and owing;

(b) To collect and receive any money or moneys that may be owing to the said defendants, or either of them.

E. R. WALKER,
C.

Respectfully advised,

ALONZO CHURCH,
V.-C.

Exhibit—Not marked. Record in Chancery, Attorney General vs. Universal Finance Corporation, et al.

ORDER DISCHARGING ORDER TO SHOW CAUSE and DISMISSING BILL OF COMPLAINT.

Filed January 4, 1929.

This matter coming on to be heard on the return of the order to show cause allowed herein on December 27, 1928, and the court having read and considered the allegations in the bill of complaint and the affidavit, schedule and exhibits thereto attached and forming part thereof, and the affidavits and exhibits of the defendants filed on January 2, 1929, and having heard the argument of counsel of the respective parties, Richard C. Plumer and Harry R. Coulomb, appearing in behalf of the Attorney General, George T. Vickers in behalf of Universal Finance Corporation, and George S. Hobart in behalf of Financial Investment Corporation; it is thereupon, on this 4th day of January, 1929, on motion of George T. Vickers, Solicitor of Universal Finance Corporation, and Hobart & Minard, Solicitors of Financial Investment Corporation,

ORDERED that said order to show cause be, and the same is hereby discharged, and that the bill of complaint be and the same is hereby dismissed.

E. R. WALKER,
C.

Respectfully advised,

ALONZO CHURCH,
V.-C.

Exhibit—Not marked. Record in Chancery, Attorney General vs. Universal Finance Corporation, et al.

ORDER DENYING MOTION TO REOPEN ORDER DISMISSING BILL OF COMPLAINT.

(Filed Feb. 20, 1929.)

This matter coming on to be heard on the return of the order to show cause allowed on February 1, 1929 in a certain suit in this Court wherein Samuel Klein was complainant, and the defendant, Universal Finance Corporation, was defendant, on the first report of the custodial receiver appointed in said matter, filed on that date, and the Attorney General of the State of New Jersey having moved that the order heretofore made by this Court on January 4, 1929, dismissing the bill of complaint herein be opened and that said bill be revived as against the defendant, Financial Investment Corporation, and the Court having heard the argument of counsel of the respective parties on said motion, Richard C. Plumer, Special Assistant to the Attorney General, appearing in behalf of the Attorney General, George T. Vickers, in behalf of the defendant, Universal Finance Corporation, and George S. Hobart, in behalf of the defendant, Financial Investment Corporation; and the Court being of the opinion that said motion should be denied;

It is, thereupon, on this 20th day of February, 1929, on motion of Hobart & Minard, Solicitors of Financial Investment Corporation ORDERED that the said motion be, and the same is hereby denied.

E. R. WALKER,
C.

Respectfully advised

(Sgd) ALONZO CHURCH,
V. C.

Exhibit—Not marked. Record in Chancery, Samuel Klein vs. Universal Finance Corporation.

EXHIBIT—Not Marked.

File of the Court of Chancery in the case wherein Samuel Klein is complainant, and Universal Finance Corporation is defendant.

BILL OF COMPLAINT AND AFFIDAVIT.

(Filed January 3, 1929.)

IN CHANCERY OF NEW JERSEY.

TO HIS HONOR, EDWIN ROBERT WALKER, CHANCELLOR OF THE STATE OF NEW JERSEY.

Complainant, Samuel Klein, complaining of the defendant, Universal Finance Corporation, a corporation, on behalf of himself and all other stockholders of the defendant corporation who may come in and contribute to the expense of this suit respectfully shows:—

1. That complainant is the holder of 200 shares of preferred stock of said Universal Finance Corporation, having paid on account therefor the sum of $1200.00.

2. That the defendant, Universal Finance Corporation, is a corporation organized and existing under and by virtue of the laws of the State of New Jersey and heretofore secured permission from the Department of Banking & Insurance to carry on the business of a loan company pursuant to Chapter 49 of the Laws of 1914, the amendment thereto and supplements thereof, being permitted to lend amounts up to $300.00 as is more particularly set forth in the Statutes of this State in such case made and provided.

3. The said corporation was originally known as the Public Service Finance Co. but subsequently changed its name to the present one due to injunctive proceedings instituted by the Public Service Company of New Jersey

to restrain the use of the name "Public Service" by defendant.

4. The said defendant corporation has its principal place of business at the corner of Broad and Market Streets in the City of Newark, Essex County in this State.

5. Complainant alleges upon information and belief and charges the fact to be that the voting power of said corporation is vested in its common shares of stock of which there are 5000 shares issued and outstanding which are held by certain officers and directors of the corporation and which stock has not been sold to the public.

6. That there has been sold to the public the preferred stock which is non-voting; said stock being of the par value of $10.00 and complainant alleges upon information and belief that upwards of $366,869.72 was collected by the company from the sale of its preferred stock, the said stock being extensively advertised by means of radio talks.

7. That the said corporation did not directly sell its stock but used as its sales agent a corporation known as the Financial Investment Company which was the sales agency for said company, receiving twenty-five per cent of the sales price of the stock as its commission in said sales.

8. That although said company had only been in business for several months it nevertheless increased the price of its preferred stock from $14.00 a share to $16.00 a share, which was the final price at which it was sold to the public.

9. That ever since its incorporation the defendant has been engaged in selling, offering for sale and promoting the sale of preferred stock by means of the radio talks.

10. That on or about December 19, 1928, the officers of said corporation, to wit, Charles Perry, Alexander G. Edwards, Walter F. Hawthorne and Dewey T. Evans were

Exhibit—Not marked. Record in Chancery, Samuel Klein vs. Universal Finance Corporation.

examined under oath by Richard C. Plumer, Special Assistant Attorney General, for the purpose of ascertaining the facts and circumstances concerning the issuance, sale and distribution of the securities of said defendant corporation and thereafter upon the evidence secured at said hearing, a bill of complaint was filed in Chancery of New Jersey wherein Edward L. Katzenbach, Attorney General of the State of New Jersey, is complainant, and Universal Finance Corporation, and others, are defendants, for the purpose of restraining said defendant corporation from issuing, selling, offering for sale, advertising or distributing any of the capital stock or securities of the defendant corporation and for the appointment of a receiver, among other prayers.

11. That upon the filing of the said bill of complaint, an order to show cause was issued, returnable before the Court of Chancery on January 2, 1928, and said matter was heard by the Court and decision reserved.

12. That prior to said last aforementioned date and on or about December 27, 1928, certain officers of the corporation, to wit, D. D. Hollenbaugh, president, Dewey T. Evans, secretary and treasurer and Elmer Hardy, office manager, were arrested and held under bail of $2500.00 each for further action by the Grand Jury of the County of Essex.

13. Complainant further alleges upon information and belief and charges the fact to be that in the bill of complaint filed by the Attorney General of the State of New Jersey, the said Attorney General claimed that the said defendant was selling its stock by false and deceptive methods and were misrepresenting to the public the nature of its stock and the general conduct of its business.

14. Complainant further alleges and charges the *ract* to be that the said defendant corporation has been temporarily enjoined and restrained from operating its business.

15. Complainant further alleges upon information and belief and charges the fact to be that all the books, papers

and documents of the defendant corporation were seized by the Prosecutor's Office of Essex County and are now being held by them and said Prosecutor's Office refuses to turn over the books of the company or its agents.

16. Complainant further alleges upon information and belief and charges the fact to be that the said officers of the corporation are charged with maintaining a disorderly house where the law was being violated habitually, and the officers of the Financial Investment Company were charged with securing money under false pretenses from the sale of the stock of the said corporation.

17. Complainant further alleges upon information and belief that certain dividends of the corporation heretofore declared were paid from capital and not from surplus or profits.

18. Complainant further alleges and charges the fact to be that the license of said defendant corporation has been revoked and that said defendant corporation has not its license to carry on its business for which it was formed.

19. Complainant therefore charges that the affairs of said corporation, because of the action of the Attorney General's Office, the newspaper publicity and notoriety given to the affairs of the corporation and because of the action of the Prosecutor's Office, are in a precarious condition.

20. That complainant believes that the public has lost such faith and confidence in the company that it will not be able to conduct its business hereafter with safety to the stockholders.

21. Complainant further charges that the said defendant corporation has suspended its business and is not functioning, its place of business being closed and complainant does not know whether said corporation will be able to continue its business in the future, or if it should continue

in the future complainant doubts whether it can carry on its business advantageously.

22. Complainant further charges that thereby he, as a stockholder, and the other stockholders, will suffer irreparable injury and loss that there is no one at the present time who can take control of the affairs of said corporation and the securities of said corporation may depreciate in value daily due to the fact that the company is enjoined from disposing of same.

23. That complainant is informed that debtors are not paying their several claims and demands due to the fact that the company's office is closed and that the assets of said company will be and are being dissipated by the litigation surrounding its affairs, all of which will work irreparable injury to the stockholders of said defendant company.

24. Complainant therefore charges that unless this Court intervenes by the appointment of a receiver or receivers to take charge and conserve the assets of the defendant company for the benefit of its stockholders and creditors, the defendant's property will be dissipated and its assets diminished by lack of proper care and attention by virtue of the various litigations against it and its officers.

25. Complainant further alleges that the affairs of the company are being conducted at the present time at a great loss and greatly prejudicial to the interest of its creditors and stockholders.

26. Complainant further alleges that unless the management and control of the business of the defendant corporation is vested in a receiver or receivers to be appointed by the court, either under the Statutes of the State of New Jersey, or under the general equity powers of this Court, the stockholders of said company will suffer irreparable injury and great loss and depreciation in the value

of their holdings, and that the affairs of said company will be in a chaotic condition.

27. Complainant therefore alleges that in view of all the facts aforesaid, that the officers of the corporation and the directors are not proper parties to hold and preserve the assets of the defendant corporation for the benefit of the stockholders and that the assets of said corporation should be held for the purpose of being properly preserved and protected by a receiver of this Court.

Complainant is without adequate remedy in the Courts of law and therefore prays:—

1. That the said defendant, Universal Finance Corporation, a corporation, may answer this bill of complaint without oath and each statement therein made.

2. That the said defendant company may be decreed that its business is being conducted at a great loss and greatly prejudicial to the interest of its creditors and stockholders.

3. That it may be decreed that the assets of said defendant corporation be held for the purpose of preserving and protecting them by a receiver or receivers to be appointed under the general equity powers of this Court with such power as may be necessary in the premises.

4. That a receiver or receivers be appointed for said defendant corporation, either according to the Statutes of this State in such case made and provided, or that an equity receiver be appointed with such powers as may be necessary in the premises.

5. That an injunction issue from this Honorable Court restraining the said defendant corporation and its officers, agents and servants from exercising any of its rights, privileges or franchises granted by the State of New Jersey, and from paying out, selling, assigning or transferring any of its estate, moneys, funds, lands and

Exhibit—Not marked. Record in Chancery, Samuel Klein vs. Universal Finance Corporation.

tenements or effects, except to a receiver appointed by this Court until the Court shall otherwise order.

6. That the Court fully administer the funds, being the entire assets of the defendant corporation and for the purpose marshal and ascertain all of its assets, liens and priority, if any, existing on all parts thereof and enforce the lawful liens of all the creditors and stockholders of the said defendant corporation as they may be finally ascertained.

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

8. That the complainant may have such other and further relief as the nature of the case may require.

Herbert L. Elins
Solicitor for and of counsel
with complainant.

STATE OF NEW JERSEY,
COUNTY OF ESSEX. } *ss.*

SAMUEL KLEIN, being duly sworn according to law upon his oath deposes and says that:—

1. I am the complainant in this cause of action; that I have read the bill of complaint and same is true to the best of my knowledge, information and belief.

2. I am the holder of 200 shares of the capital preferred stock of the Universal Finance Corporation having paid on account therefor the sum of $1200.00, the balance being payable in installments not yet due and I am ready to pay said installments as and when they become due under my contract.

3. The defendant, Universal Finance Corporation is a corporation organized and existing under and by virtue of

the laws of the State of New Jersey and heretofore secured permission from the Department of Banking & Insurance to carry on the business of a loan company pursuant to Chapter 49 of the Laws of 1914, the amendment thereto and supplements thereof, being permitted to lend amounts up to $300.00 as is more particularly set forth in the Statutes of this State in such case made and provided.

4. The said corporation was originally known as the Public Service Finance Co. but subsequently changed its name to the present one due to an injunctive proceedings instituted by the Public Service Company of New Jersey to restrain the use of the name "Public Service" by defendant.

5. The said defendant corporation has its principal place of business at the corner of Broad and Market Streets in the City of Newark, Essex County in this State.

6. I allege upon information and belief and charge the fact to be that the voting power of said corporation is vested in its common shares of stock of which there are 5000 shares issued and outstanding which are held by certain officers and directors of the corporation and which stock has not been sold to the public.

7. That there has been sold to the public the preferred stock which is non voting; said stock being of the par value of $10.00 and I allege upon information and belief that upwards of $366,869.72 was collected by the company from the sale of its preferred stock, the said stock being extensively advertised by means of radio talks.

8. The said corporation did not directly sell its stock but used as its sales agent a corporation known as the Financial Investment Company which was the sales agency for said company, receiving twenty-five per cent of the sales price of the stock as its commission in said sales.

9. That although said company had only been in business for several months its nevertheless increased the

Exhibit—Not marked. Record in Chancery, Samuel Klein vs. Universal Finance Corporation.

price of its preferred stock from $14.00 a share to $16.00 a share, which was the final price at which it was sold to the public.

10. That ever since its incorporation the defendant has been engaged in selling, offering for sale and promoting the sale of preferred stock by means of the radio talks.

11. That on or about December 19, 1928, the officers of said corporation, to wit, Charles Perry, Alexander G. Edwards, Walter F. Hawthorne and Dewey T. Evans were examined under oath by Richard C. Plumer, Special Assistant Attorney General, for the purpose of ascertaining the facts and circumstances concerning the issuance, sale and distribution of the securities of said defendant corporation and thereafter upon the evidence secured at said hearing, a bill of complaint was filed in Chancery of New Jersey wherein Edward L. Katzenbach, Attorney General of the State of New Jersey, is complainant, and Universal Finance Corporation, and others, are defendants, for the purpose of restraining said defendant corporation from issuing, selling, offering for sale, advertising or distributing any of the capital stock or securities of the defendant corporation and for the appointment of a receiver, among other prayers.

11. That upon the filing of the said bill of complaint, an order to show cause was issued returnable before the Court of Chancery on January 2, 1928, and said matter was heard by the Court and decision reserved.

12. That prior to said last aforementioned date and on or about December 27, 1928, certain officers of the corporation, to wit, D. D. Hollenbaugh, president, Dewey T. Evans, secretary and treasurer and Elmer Hardy, office manager, were arrested and held under bail of $2500.00 each for further action by the Grand Jury of the County of Essex.

13. I further allege upon information and belief and charge the fact to be that in the bill of complaint filed

by the Attorney General of the State of New Jersey, the said Attorney General claimed that the said defendant was selling its stock by false and deceptive methods and were misrepresenting to the public the nature of its stock and the general conduct of its business.

14. I further allege and charge the fact to be that the said defendant corporation has been temporarily enjoined and restrained from operating its business.

15. I further allege upon information and belief and charge the fact to be that all the books, papers and documents of the defendant corporation were seized by the Prosecutor's office of Essex County and are now being held by them and said Prosecutor's office refuses to turn over the books to the company or its agents.

16. I further allege upon information and belief and charge the fact to be that the said officers of the corporation are charged with maintaining a disorderly house where the law was being violated habitually, and the officers of the Financial Investment Company were charged with securing money under false pretenses from the sale of the stock of the said corporation.

17. I further allege upon information and belief that certain dividends of the corporation heretofore declared were paid from capital and not from surplus or profits.

18. I further allege and charge the fact to be that the license of said defendant corporation has been revoked and that said defendant corporation has not its license to carry on its business for which it was formed.

19. I therefore charge that the affairs of said corporation, because of the action of the Attorney General's Office, the newspaper publicity and notoriety given to the affairs of the corporation and because of the action of the Prosecutor's Office, are in precarious condition.

20. That I believe that the public has lost such faith and confidence in the company that it will not be able to

conduct its business hereafter with safety to the stockholders.

21. I further charge that the said defendant corporation has suspended its business and it is not functioning, its place of business being closed and I do not know whether said corporation will be able to continue its business in the future, or if it should continue in the future I doubt whether it can carry on its business advantageously.

22. I further charge that thereby I, as a stockholder, and the other stockholders, will suffer irreparable injury and loss; that there is no one at the present time who can take control of the affairs of said corporation and the securities of said corporation may depreciate in value daily due to the fact that the company is enjoined from disposing of same.

23. That I am informed that debtors are not paying their several claims and demands due to the fact that the company's office is closed and that the assets of said company will be and are being dissipated by the litigation surrounding its affairs, all of which will work irreparable injury to the stockholders of said defendant company.

24. I therefore charge that unless this Court intervenes by the appointment of a receiver or receivers to take charge and conserve the assets of the defendant company for the benefit of its stockholders and creditors, the defendant's property will be dissipated and its assets diminished by lack of proper care and attention by virtue of the various litigations against it and its officers.

25. I further allege that the affairs of the company are being conducted at the present time at a great loss and greatly prejudicial to the interest of its creditors and stockholders.

26. I further allege that unless the management and control of the business of the defendant corporation is vested in a receiver or receivers to be appointed by the

Exhibit—Not marked. Record in Chancery, Samuel Klein vs. Universal Finance Corporation.

court, either under the Statutes of the State of New Jersey, or under the general equity powers of this Court, the stockholders of said company will suffer irreparable injury and great loss and depreciation in the value of their holdings, and that the affairs of said company will be in a chaotic condition.

27. I therefore allege that in view of all the facts aforesaid, that the officers of the corporation and the directors are not proper parties to hold and preserve the assets of the defendant corporation for the benefit of the stockholders and that the assets of said corporation should be held for the purpose of being properly preserved and protected by a receiver of this court.

SAMUEL KLEIN

Sworn and subscribed to
before me this 3rd day of
January, 1929

Charles Silber
Attorney at Law
of New Jersey.

ORDER APPOINTING CUSTODIAL RECEIVER.

(Filed Jan. 4, 1929.)

This matter coming on before the Court in the presence of Herbert L. Elins, of counsel with the complainant, and George T. Vickers, of counsel with the defendant, Universal Finance Corporation, and George S. Hobart, of counsel with Financial Investment Corporation, upon the application of the complainant for the appointment of a Receiver of the defendant, Universal Finance Corporation, either under the provisions of the statute, "An Act concerning corporations, revision of 1896" and its supple-

Exhibit—Not marked. Record in Chancery, Samuel Klein vs. Universal Finance Corporation.

ments and amendments or under the general equity power of the Court, and the matter being heard and it appearing to the Court that at the present time the said Universal Finance Corporation is not functioning and cannot function under the management of its directors and officers and that as a result thereof the assets of the said defendant corporation may be dissipated and the good will of the defendant corporation destroyed and great loss and injury be occasioned to the stockholders and that it is essential for the protection of the business of the defendant corporation and of the interest of its stockholders and of the public that a Receiver be forthwith appointed for the defendant corporation and its assets, with the powers granted by this order;

It is on this 4th day of January, 1929, ORDERED, that Merritt Lane, Esq., of the City of Newark, be and he is hereby appointed Receiver of the franchises, property and assets of every kind and description of the defendant corporation, and he is hereby directed to take into his possession and control all of the assets, property and property rights and rights of every class and description of and appertaining to the defendant corporation, including all evidence of the right of the defendant corporation to transact business, and including all of its books and papers of every class and description. And the officers of said defendant corporation and its agents and all persons holding possession or control of any of the assets, books, papers, documents, rights, evidences of rights are directed to forthwith turn over to the said receiver all such property, etc.

And the said receiver be and he is hereby authorized, in his discretion, to continue the business of the defendant corporation in such manner and under such conditions as he may deem proper, and to hire and employ and pay such employees and agents as may to him seem meet for the purpose aforesaid. And he is authorized to pay such operating expenses of the said business as he may incur

and also any of the debts of the defendant corporation and generally, to conduct the business of the defendant corporation in his discretion with all the powers of the board of directors and of the officers of said corporation; he may in his discretion continue the employment of such of the present employees and agents of the defendant corporation as he may deem meet or may employ other and different employees, including accountants; he shall have power to exercise all of the privileges and franchises of said corporation; he shall have power, in his discretion, to sell and dispose of such of the assets of the defendant corporation as he shall deem meet and may retain such of the assets and investments as he may deem meet and *amy* pledge such of the assets of the defendant corporation as he may deem meet for the purpose of borrowing money.

And it is further ORDERED that said Receiver shall also have power to send for and to examine, under oath, persons and papers and to examine any persons, including officers, employees and agents of the said defendant corporation, respecting its affairs and transactions and its estate, monies, goods, chattels, credits, notes, bills and choses in action real and personal estate and effects of every kind, and also respecting its debts, obligations, contracts and liabilities and the claims against it.

Said receiver shall, on the return of this order, present a report to this Court of the business of the corporation and his recommendations with respect thereto.

And it is further ORDERED that before the said receiver enter upon the discharge of his duties, he give a bond to the Chancellor in the penal sum of $20,000.00 with surety to be approved by John A. Bernard, a Special Master of this Court, conditioned that he will well and faithfully perform the duties of his said trust and will account as the Court of Chancery shall direct, for the assets of the defendant corporation which may come to his

Exhibit—Not marked. Record in Chancery, Samuel Klein vs. Universal Finance Corporation.

hands, and will comply with such orders and decrees as the Court of Chancery may make in the premises.

And it is further ORDERED that the said defendant corporation, its officers and agents, until the further order of the Court, desist and refrain 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, monies, funds, lands, tenements or effects except to the receiver appointed by this order; and that said corporation its officers and agents and all persons whomsoever, desist and refrain from interfering in any wise with the administration of the affairs of the said corporation as directed by this order by the receiver.

And it is further ORDERED that the application for an injunction and for a receiver under the provisions of the Act of 1896, its supplements and amendments, be continued until Tuesday, the 22nd day of January, 1929, at Chancery Chambers in the City of Newark, at ten o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, provided, however, that such application may be brought on by any person interested and application for further relief may be made by any person interested including the receiver, upon twenty-four hours notice to the solicitor appearing herein for the defendant corporation.

EDWIN ROBERT WALKER,
C.

Respectfully advised,

ALONZO CHURCH,
V.-C.

Exhibit—Not marked. Record in Chancery, Samuel Klein vs. Universal Finance Corporation.

AFFIDAVIT ON BEHALF OF DEFENDANT.

STATE OF NEW JERSEY,
COUNTY OF ESSEX. } *ss.*

GEORGE T. VICKERS, being duly sworn, according to law, on his oath, says:

I am the solicitor of the defendant. I am also the solicitor of the said defendant in an action brought in this court against that corporation and Financial Investment Corporation wherein Edward L. Katzenbach, as Attorney General of the State of New Jersey, is complainant.

In the action wherein said Attorney General was complainant, affidavits were filed in this court on behalf of the defendants therein, on January 2, 1929. Attached hereto is a copy of said affidavits.

GEORGE T. VICKERS.

Subscribed and sworn to
at Newark, N. J., this 4th
day of January, 1929,
before me

JOHN J. GAFFEY
Notary Public of New Jersey.

Attached to the foregoing affidavit are copies of the affidavits (hereinbefore printed) in the action brought in the Court of Chancery wherein Edward L. Katzenbach is Complainant and Universal Finance Corporation and Financial Investment Corporation are Defendants.

Exhibit—Not marked. Record in Chancery, Samuel Klein vs. Universal Finance Corporation.

ORDER TO SHOW CAUSE.

(Filed Feb. 1, 1929.)

This matter being opened to the court by Herbert L. Elins, of counsel with the complainant, and upon reading and filing a report made by Merritt Lane, Receiver:

It is, on this 1st day of February, 1929, ORDERED that the stockholders (both common and preferred) of the defendant corporation and the defendant corporation; the Commissioner of Banking and Insurance of the State of New Jersey; the Attorney General of New Jersey; the Prosecutor of the Pleas of Essex County; show cause before the Chancellor, at Chancery Chambers, in the City of Newark (1060 Broad Street, 8th Floor), on Wednesday, the 13th day of February, 1929, at 10 o'clock in the forenoon, or as soon thereafter as counsel can be heard, why an order should not be made:

1. Adjudging that the business of the defendant corporation has been and is being conducted at great loss and greatly prejudicial to the interests of its creditors and stockholders so that its business cannot continue to be conducted with safety to the public and advantage to the stockholders and appointing a receiver to liquidate the affairs of the said defendant corporation and distribute its assets to creditors and stockholders, OR—

2. Adjudging that the affairs of the defendant corporation should be liquidated under the general equity jurisdiction of the court and a receiver appointed for the purpose of liquidating such affairs and distributing the assets of the defendant corporation among its creditors and stockholders, OR—

3. Adjudging that the business of the defendant corporation should be continued and the assets and property of the defendant corporation turned back to the corporation and its officers and directors, and

Exhibit—Not marked. Record in Chancery, Samuel Klein vs. Universal Finance Corporation.

4. Passing the accounts of the receiver and fixing his compensation and the compensation for the solicitor and counsel for the complainant including such services as may have been rendered by him to the receiver, AND/OR

5. Directing the receiver with respect to the manner in which he should continue in the operation of the receivership.

6. Adjudging, if the court should direct that the assets be turned back to the corporation and its business continued, that the license should not be revoked for any alleged past offenses and that an injunction go restraining the Commissioner of Banking and Insurance from revoking the license.

7. Directing, if the court should determine that the business should be turned back to the corporation and the business continued, the receiver to deliver to the corporation the books, papers, documents and assets which were delivered to the receiver by the Prosecutor of the Pleas of Essex County, and directing the Prosecutor of the Pleas of Essex County to restore any other property of defendant corporation under his control to it.

And it is further ordered that the respondents hereto also show cause at the time and place aforesaid why such other order or decree should not be made as to the court shall seem proper with respect to the administration of the affairs of the defendant corporation through or by means of a receivership or otherwise.

And it is further ordered that the preferred stockholders indicate to the court at the time and place aforesaid whether they propose to attempt to rescind their stock purchases or their stock subscriptions, or whether they desire to continue to remain as stockholders of the said defendant corporation if the business be continued, or desire to remain bound by their stock subscriptions and continue to make payments thereon, assuming that the assets of the defendant corporation are returned to the corporation

Exhibit—Not marked. Record in Chancery, Samuel Klein vs. Universal Finance Corporation.

and its officers and directors, and for the better ascertaining the desire of the stockholders the receiver is directed to send to each of the stockholders (preferred and common) in the manner hereinafter provided for the service of this order a copy of the report of the receiver (not including the exhibits except the financial statements) and a questionnaire, the form of which is submitted to the court with the report of the receiver and is approved by the court, and there shall also be sent to the said preferred and common stockholders a stamped envelope addressed to the receiver.

And it is further ordered that those stockholders, both preferred and common, who shall not appear upon the return day herein and indicate their election or who shall not reply to the questionnaire of the receiver shall be considered as acquiescing in the business being turned back to the corporation and its officers and directors and as acquiescing in the continuance of the business and as electing if the business of the corporation be turned back to the corporation, its officers and directors, to remain bound as stockholders, or to remain bound upon their stock subscriptions and to be liable for any unpaid part of such stock subscriptions.

And it is further ordered that the report of the receiver, together with the material submitted by the receiver with his report be deposited with the Sergeant-at-Arms of the Court of Chancery at Chancery Chambers, Newark, N. J., until the return day hereof subject to inspection by any person interested.

And it is further ordered that copies of this order, which need not be certified, be mailed (as printed matter) to each of the common and preferred stockholders of the defendant corporation, whose addresses are known to the receiver, within one day of the date hereof, and be likewise served upon the Attorney General of the State of New Jersey; the Commissioner of Banking and Insurance of the State of New Jersey and the Prosecutor of the Pleas

Exhibit—Not marked. Record in Chancery, Samuel Klein vs. Universal Finance Corporation.

of Essex County, by delivery at their respective offices within the time aforesaid.

E. R. WALKER,
C.

Respectfully submitted,

ALONZO CHURCH,
V.-C.

Questionnaire to Stockholders (Common and Preferred) of Universal Finance Corporation
Notice and Directions

This questionnaire is sent to stockholders, common and preferred, of the Universal Finance Corporation, by direction of the Court of Chancery contained in an order dated February 1st, a copy of which is enclosed herewith.

The stockholder will indicate his preference by placing a cross [X] after the statement which expresses his election and returning this questionnaire to the receiver forthwith in the enclosed stamped envelope. Stockholders' particular attention is directed to the fact that, by the terms of the order, those stockholders who do not answer this questionnaire will be held as acquiescing in the return of the assets of the defendant corporation to the corporation, its officers and directors and to a continuance of the business and will be held to have elected to remain stockholders and those who have not completed their subscriptions will be held to have elected to be bound by such subscriptions and to be bound to continue payments thereon. It is *important* therefore that every stockholder answer this questionnaire.

The receiver is informed that a preferred stockholders' committee is seeking authority of the preferred stockholders to act for them. If the stockholder desires the preferred stockholders' committee to act for him and to be

bound by any act of the stockholders' committee the cross should be placed opposite the third statement.

The stockholder is to sign this questionnaire—if stock is paid for in full he is to sign on the line over the word "stockholder"—if the stock is not paid for in full he is to sign on the line above the word "subscriber." He is to give the number of shares owned and paid for in full at the place indicated and the number of shares subscribed for but not paid for in full at the place indicated and at each place he is to give the amount paid to the corporation for stock or on account of subscriptions.

MERRITT LANE, *Receiver,*
Prudential Building, 763 Broad Street,
Newark, N. J.

1. I desire that the affairs of the Universal Finance Corporation be liquidated through a receivership in the Court of Chancery, and that the assets be distributed to stockholders. I realize that in making this election stockholders and subscribers will not be paid the amount which they have paid in on capital stock or their subscriptions. [ ]

2. I desire that the business and assets of the Universal Finance Corporation be returned to the corporation, its officers and directors and that its business be continued and I agree in such case to remain bound either as a stockholder or subscriber to capital stock, waiving any right which I may have to elect to rescind. [ ]

3. I desire that my interests be looked after by a preferred stockholders' committee to which I have given power to act for me, and I agree to be bound by whatever such preferred stockholders' committee may do in the premises, and I have granted to that committee, if the assets of the corporation be returned to the corporation, its officers and directors and the business be continued the right to bind me to continue as a stockholder of such cor-

Exhibit—Not marked. Record in Chancery, Samuel Klein vs. Universal Finance Corporation.

poration or to remain bound on my subscription to stock.
[ ]

Signed.....
Stockholder.

Signed.....
Subscriber.

Address.....

Number of Shares owned.....; amount paid $.....
Number of Shares subscribed for.....; amount paid $.....

AFFIDAVIT OF ALFRED L. KIRBY.

(Filed Feb. 13, 1929.)

STATE OF NEW JERSEY
COUNTY OF ESSEX } *ss.*

ALFRED L. KIRBY, of full age, being duly sworn according to law, on his oath deposes and says:

Shortly before the filing of the first report of the Receiver on February 1, 1929, several of the preferred stockholders of the defendant requested me to co-operate with them in organizing a Committee to represent the preferred stockholders and subscribers of the defendant.

This Committee was organized on January 31, 1929 and is made up of the following members in addition to myself:

Dr. V. A. Rightmire
Mr. Matthew J. Carmody
Mr. Alexander G. Edwards
Dr. John O. Boals

An agreement between the Committee and such of the preferred stockholders and subscribers as might choose to become parties thereto was executed by the several mem-

Exhibit—Not marked. Record in Chancery, Samuel Klein vs. Universal Finance Corporation.

bers of the Committee on January 31, 1929, and on February 2nd a copy of this agreement, with a letter in further explanation thereof was sent by mail to all stockholders and subscribers whose names and addresses could be ascertained from the books of the defendant company.

Copy of the agreement (including the power of attorney thereto annexed) is attached as Exhibit "A."

Copy of said letter is attached as Exhibit "B."

The offer of the Financial Investment Corporation mentioned in said letter has been duly executed by said corporation and is now in the hands of the solicitors of the Financial Investment Corporation and this defendant, and is ready to be delivered to the defendant when and if the condition named in the offer is fulfilled.

Copy attached as Exhibit C.

The bond for $15,000.00 mentioned in said letter has also been duly executed and is in the possession of said solicitors, marked exhibit "D."

As collateral security for the performance of the condition of the bond, trust deeds have been executed for certain property in New Jersey and in Florida, and copies are attached as follows:

Deed from Annette H. Edwards and Thomas P. Edwards, (marked Exhibit "E")

Deed from Viola B. Edwards and Alexander G. Edwards (Marked Exhibit "F")

Deed from Belle M. Edwards (marked Exhibit "G")

The properties described in the first two deeds are located in the Borough of Roselle, New Jersey; the appraised values thereof as shown by the affidavit of Robert N. Ferguson, former president of the Real Estate Board of Roselle-Roselle Park, New Jersey, are as follows:

Property of Annette H. Edwards and Thomas P. Edwards, the sum of.....$14,000.00

Property of Viola B. Edwards and Alexander G. Edwards, the sum of.....$16,000.00

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I am informed by Alexander G. Edwards and Thomas P. Edwards, that the appraised value of the property in Florida covered by the deed from Belle M. Edwards is the sum of $25,000.

Up to 4 p. m. Tuesday, February 12, 1929 I am informed by the clerk in charge of the stock books that the stockholders' agreement has been executed by preferred stockholders and subscribers to preferred stock as follows:

By preferred stockholders.....16,394 shares.

By subscribers to preferred stock..... 9,319 shares.

as indicated by the signing and mailing of the consent and power of attorney attached to said stockholders' agreement.

At a meeting of the Committee held on February 11, 1929, the Committee authorized me to instruct its solicitors to make the following report to the court as to the Committee's determination concerning various matters relating to the rights of the preferred stockholders and subscribers.

(a) The Committee recommends that said offer of Financial Investment Corporation be accepted and to that end the Financial Investment Corporation be requested, in accordance with said offer, to immediately advance to Universal Finance Corporation, the amount of money to pay the dividend to preferred stockholders at the rate of 10% per annum on the par value of the preferred stock, which was declared on December 5, 1928 and payable on January 2, 1929; and that the Financial Investment Corporation and its solicitors be requested to deliver forthwith to Universal Finance Corporation the said offer, bond and deeds. PROVIDED, HOWEVER, that the condition of said offer be fulfilled, to wit, the discharge of the receiver of Universal Finance Corporation, and the continuance of its business as heretofore, and the return to it of its license to do business pursuant to chapter 49, Laws of 1914.

Exhibit—Not marked. Record in Chancery, Samuel Klein vs. Universal Finance Corporation.

(b) The Committee has determined that it is for the best interests of the preferred stockholders and subscribers that the business of Universal Finance Corporation be continued under the management of its own officers and directors.

(c) The Committee has determined in behalf of the preferred stockholders and subscribers represented by it that the stock and subscription contracts be ratified.

ALFRED L. KIRBY.

Sworn and subscribed to
before me this 13th day of
February, 1929.

JOHN J. GAFFEY,
A Notary Public of New Jersey.

EXHIBIT A.

(Attached to Affidavit of Alfred L. Kirby.)

PREFERRED STOCKHOLDERS' AGREEMENT

THIS AGREEMENT Made this 31st day of January, Nineteen Hundred and Twenty-nine, between Alfred S. Kirby, Dr. V. A. Rightmire, Matthew J. Carmody, Alexander G. Edwards and Dr. John O. Boals as a Committee (hereinafter called the Committee), parties of the first part, and such holders of the preferred stock and of subscribers thereto, of Universal Finance Corporation, a corporation of the State of New Jersey (hereinafter called the Corporation) as shall become parties hereto, in the manner herein provided (hereinafter called the Stockholders), parties of the second part;

WITNESSETH,

WHEREAS on January 4, 1929, by order of the Court of Chancery of New Jersey one Merritt Lane, Esquire, of the City of Newark was appointed and qualified as re-

ceiver of the franchises, property and assets of the Corporation, and was directed to take same into his possession and control; and was duly authorized in his discretion to continue the business of the Corporation in such manner and under such conditions as he might deem proper; and

WHEREAS, in and by said order of the said Court of Chancery it was directed that the application for an injunction and receiver under the provision of the Corporation Act of 1896 with supplements and amendments, be continued until January 22, 1929; and,

WHEREAS, on said date said application was further continued until January 29, 1929; and on said latter date was further continued until February 13, 1929; and

WHEREAS, it is deemed advisable that the holders of, and subscribers to, the shares of the preferred stock of the Corporation should unite for the protection of their interests and the maintenance and enforcement of their rights; and

WHEREAS, the parties of the first part have agreed to act as a Committee under this agreement to protect the interests of such of the holders of, and subscribers to, said preferred stock as may become parties hereto, and to maintain and enforce their rights as stockholders and subscribers;

NOW, THEREFORE, in consideration of the premises and of the consent of the parties of the first part to act as a Committee on behalf of the Stockholders, the Stockholders do hereby, severally, agree with one another and with the Committee as follows:

First: The Stockholders hereby make, constitute and appoint Alfred S. Kirby, Dr. V. A. Rightmire, Matthew J. Carmody, Alexander G. Edwards and Dr. John O. Boals as the Committee under this agreement.

Second: Holders of, and subscribers to, the preferred stock of the Corporation may become parties to this agreement by subscribing the power of attorney hereto attached; and forwarding same to the Committee.

Exhibit—Not marked. Record in Chancery, Samuel Klein vs. Universal Finance Corporation.

Third: The signing of said power of attorney and the forwarding thereof to, and the receipt thereof by, the Committee, shall have the same force and effect as if the Stockholders and the Committee had each of them severally, subscribed their names to the original of this agreement, and the retained copy of the agreement from which said power of attorney has been detached and forwarded shall constitute the stockholders' agreement with the Committee.

Fourth: The Committee may limit the time within which the Stockholders may become parties to this agreement.

Fifth: The stockholder's consent to this agreement shall not pass title to the certificates of stock, but such title shall remain in the stockholder.

Sixth: As to each and all of the shares of stock, each stockholder, or subscriber, hereby appoints the Committee, his attorney in fact, with full power of substitution, in his name or on his behalf, and in respect of his stock or his interest therein, or subscription thereto, to do whatever the Committee may deem proper in order fully to protect and safeguard him in respect to such stock and expressly authorizes and directs the Committee to represent him for the purpose of protecting and enforcing his rights and interests, including whatever right the stockholder or subscriber may have to rescind his stock or subscription or to ratify the same.

Seventh: The Committe agrees to do whatever it deems proper in order fully to protect and safeguard the Stockholders for the purpose of protecting and enforcing their rights and interests; and agrees to submit complete reports to the Stockholders, from time to time, of all matters, arising under this agreement, which may affect their rights and interests.

Eighth: It is expressly understood and agreed that all expenses of the Committee, including compensation of the members thereof and of any of their attorneys or agents,

Exhibit—Not marked. Record in Chancery, Samuel Klein vs. Universal Finance Corporation.

shall be borne and paid by the Committee and no charge therefor shall at any time be made against any of the Stockholders who become parties hereto.

Ninth: This agreement shall remain in effect until December 31, 1929, unless sooner terminated by the consent of the Committee or a majority thereof, and by not less than two-thirds in number of the Stockholders who become parties hereto.

Tenth: This agreement and all its provisions shall bind the parties hereto and their and each of their heirs, executors, administrators, succesors and assigns.

IN WITNESS WHEREOF, the parties of the first part have subscribed this agreement as of the day and year first above written and the parties of the second part have become parties hereto by the execution and delivery of said consents and powers of attorney.

ALFRED S. KIRBY,
V. A. RIGHTMIRE,
MATTHEW J. CARMODY,
ALEXANDER G. EDWARDS,
JOHN O. BOALS.

POWER OF ATTORNEY

No. 32

KEEP THIS COPY.

P. O. Address
Street.....
Town .....
State.....

I ..... being the holder of, (or subsciber to), ... shares of preferred stock of the Universal (Fill in number of shares)
Finance Corporation, do hereby appoint Alfred S. Kirby, Dr. V. A. Rightmire, Matthew J. Carmody, Alexander G. Edwards and Dr. John O. Boals, as a Committee, my at-

Exhibit—Not marked. Record in Chancery, Samuel Klein vs. Universal Finance Corporation.

torney in fact, with full power of substitution in my name and on my behalf, in respect to said stock, to do whatever my said attorney may deem proper in order fully to protect and safeguard me in respect to such stock; and I authorize and direct my said attorney to represent me for the purpose of protecting and enforcing my rights and interests as a stockholder of said Universal Finance Corporation, including whatever right I may have to rescind my stock or subscription contract or to ratify the same, and I hereby consent to the agreement from which this power of attorney has been detached, and I hereby signify this consent by executing and detaching the same and forwarding it to the Committee named in the agreement as evidence of my having become a party to the agreement.

Witness:

Dated February ...., 1929.

.....

(Signature of stockholder or subscriber)

(Note: Any stockholder or subscriber who desires to become a party of this agreement may do so by signing and detaching the duplicate form below appended and forwarding the same in the enclosed stamped return envelope to the Committee, Care of Geo. S. Hobart, at Chamber of Commerce Building, Newark, N. J.)

(The foregoing copy of the agreement, and of the power of attorney to be retained by the stockholder or subscriber.)

Exhibit—Not marked. Record in Chancery, Samuel Klein vs. Universal Finance Corporation.

SIGN AND MAIL THIS COPY.

No. 32

P. O. Address
Street.....
Town.....
State..... .

I ..... being the holder of, (or subscriber to),
(Please print name)
..... shares of preferred stock of Universal Finance
(Fill in number of shares)
Corporation, do hereby appoint Alfred S. Kirby, Dr. V. A. Rightmire, Matthew J. Carmody, Alexander G. Edwards and Dr. John O. Boals, as a Committee, my attorney in fact, with full power of substitution in my name and on my behalf, in respect to said stock, to do whatever my said attorney may deem proper in order fully to protect and safeguard me in respect to such stock; and I authorize and direct my said attorney to represent me for the purpose of protecting and enforcing my rights and interests as a stockholder of said Universal Finance Corporation, including whatever right I may have to rescind my stock or subscription contract or to ratify the same, and I hereby consent to the agreement from which this power of attorney has been detached, and I hereby signify this consent by executing and detaching the same and forwarding it to the Committee named in the agreement as evidence of my having become a party to the agreement.

Witness:

Dated February ...., 1929

.....
(Signature of stockholder or subscriber)

Exhibit—Not marked. Record in Chancery, Samuel Klein vs. Universal Finance Corporation.

Also attached to foregoing affidavit of Alfred L. Kirby are the following exhibits:—

EXHIBIT "B"

Letter from stockholders' committee to stockholders and subscribers.

EXHIBIT "C"

Offer of Financial Investment Corporation.

EXHIBIT "D"

Bond for $15,000.

EXHIBIT "E"

Trust deed from Annette H. Edwards and Thomas P. Edwards.

EXHIBIT "F"

Trust deed from Viola B. Edwards and Alexander G. Edwards.

EXHIBIT "G"

Trust Deed from Belle M. Edwards.

Exhibit—Not marked. Record in Chancery, Samuel Klein vs. Universal Finance Corporation.

MEMORANDUM OF CHURCH, V.-C.

(Filed Feb. 19, 1929)

Herbert L. Elins, for complainant.

George T. Vickers and George S. Hobart for defendant Merritt Lane receiver pro se.

Samuel Dreskin for subscribers.

Richard Plumer for attorney general.

Simon Fisch for prosecutor of the pleas of Essex County.

CHURCH, *V.-C.*

This matter has been before me for several weeks. A bill by the attorney general was filed and also one by a stockholder. The allegations were that the company had and was proceeding improperly. I appointed Merritt Lane receiver under the stockholder's bill, and dismissed the attorney general's bill and asked the receiver for his report. This I have received. In it he says that in the inception of the matter certain proceedings relative to radio advertisements were deceptive, but these activities have now ceased. And he also says in his report that the company is now functioning honestly and in accordance with the law.

Questionnaires were sent out. At the last hearing no one objected to the continuance of the activities of the company. The only objection was as to whether the preferred stockholder's committee should not have more control over the company's affairs. As I said at the last hearing, I do not feel that I should go as far as giving this committee any more power than the stockholders have given it, for, in effect, that would be an effort on the part of this court to reorganize the company.

I shall therefore direct that the bill of complaint be dismissed and the receiver discharged; that the books now in the hands of the prosecutor shall be returned to the company and it shall be allowed to continue its functions.

Exhibit—Not marked. Record in Chancery, Samuel Klein vs. Universal Finance Corporation.

A request was made by the attorney general that the bill against the Financial Investment Corporation should be revived. This motion I will deny, because at the hearing it transpired that the Investment company was in a measure guaranteeing the preferred stockholders of the Universal company and, if I appointed a receiver for the Investment company, it would, as I see it, affect the Universal Company. I shall, therefore, request the preferred stockholders' committee, hitherto appointed by them, to keep a careful watch on the affairs of the Universal Finance and if, in their opinion, this company is proceeding in a way contrary to law, that they will report promptly to me in the matter that I may take such action as may be necessary in the premises.

In view of the statements made by the attorney general representing the Department of Banking and Insurance, I do not think it necessary to take any action in regard to the suggestion as to the revocation of the charter, because, as I understand it the commission has decided to take no action in this matter.

I deem this memorandum sufficient to explain my attitude, but, should any appeal be taken, I will write a more elaborate opinion.

When a decree is prepared in accordance with these conclusions, I will, on proper notice, fix the fees of receiver and of counsel.

Exhibit—Not marked. Record in Chancery, Samuel Klein vs. Universal Finance Corporation.

ORDER TO CONTINUE BUSINESS, ETC.

(Filed February 19, 1929.)

This matter being opened to the court by Herbert L. Elins, of counsel with the complainant, in the presence of Richard C. Plumer, Special Assistant to the Attorney General of the State of New Jersey, in behalf of the Attorney General and representing the Department of Banking & Insurance of the State of New Jersey, Simon L. Fisch, Assistant Prosecutor of the Pleas of the County of Essex, representing the Prosecutor of the Pleas of the County of Essex, Merritt Lane, Receiver, George T. Vickers, of counsel with the defendant corporation, George S. Hobart, of counsel with Financial Investment Corporation and the common stockholders of Universal Finance Corporation representing all of the common stock except thirty-three shares, Samuel Dreskin representing subscribers to the extent of seventy-five shares of Preferred stock of the Universal Finance Corporation, Alfred L. Kirby, a member of, and representing, the Committee of Preferred stockholders of the Universal Finance Corporation, and it appearing to the court that the order to show cause made herein upon the first day of February, 1929, has been served as in said order directed upon the Commissioner of Banking & Insurance of the State of New Jersey, the Attorney General of the State of New Jersey, the Prosecutor of the Pleas of Essex County, the defendant corporation, and has been mailed as in said order directed to all of the stockholders of Universal Finance Corporation, both Preferred and Common, and to all of the subscribers to the Preferred stock of Universal Finance Corporation, and that there has also been mailed, as in said order directed, the questionnaire to stockholders and subscribers to stock, and there having been presented to the court a second report of the receiver, which said second report presents to the court the return of the stockholders and subscribers to stock to said questionnaire, from which

Exhibit—Not marked. Record in Chancery, Samuel Klein vs. Universal Finance Corporation.

report it appears that if consideration be confined to actual returns made by the Preferred stockholders and subscribers, approximately 25% of the stockholders have elected to liquidate and approximately 60% of the subscribers have elected to liquidate, and approximately 75% of the stockholders have elected to continue and approximately 40% of the subscribers have elected to continue, and that if the stockholders and subscribers be combined then approximately 44% of the stockholders and subscribers have elected to liquidate and 56% of the stockholders and subscribers have elected to continue, based upon actual returns of Preferred stockholders and subscribers; and it further appearing to the court that the questionnaire sent out by the Receiver contained the following provision:

> "Stockholders' particular attention is directed to the fact that, by the terms of the order, those stockholders who do not answer this questionnaire will be held as acquiescing in the return of the assets of the defendant corporation to the corporation, its officers and directors and to a continuance of the business and will be held to have elected to remain stockholders and those who have not completed their subscriptions will be held to have elected to be bound by such subscriptions and to be bound to continue payments thereon. It is important therefore that every stockholder answer this questionnaire."

And it further appearing to the court that if this provision of the questionnaire be given effect, then approximately 14% of the stockholders have elected to liquidate and approximately 86% to continue, and approximately 35% of the subscribers have elected to liquidate and approximately 65% of the subscribers have elected to continue, and that if the subscribers and stockholders be combined then approximately 25% have elected to liquidate and 75% have elected to continue; and counsel for the common stockholders as aforesaid expressing the desire of

Exhibit—Not marked. Record in Chancery, Samuel Klein vs. Universal Finance Corporation.

those stockholders that the business be continued; and the Receiver having presented his account of his conduct of the business and the court having heard argument of the respective parties and no party requesting the court to continue the receivership and no party making any objection to the Receiver's accounts, and it being represented on behalf of the Commissioner of Banking & Insurance that the Commissioner of Banking & Insurance does not intend to attempt to revoke the license of the defendant corporation for any alleged past offenses of the corporation, its officers or agents, and no objection being made by the Prosecutor of the Pleas of Essex County to the Court directing the Receiver to deliver to the corporation the books, papers, documents and assets which were delivered to the Receiver by the Prosecutor of the Pleas of Essex County, and the Receiver having advised the court in his report that since his appointment certain payments aggregating approximately $6300. have been received by him on account of Preferred stock subscriptions and that the view of the Receiver is that if the court directs the continuance of the business that those subscribers who have not already elected to continue the business and be bound by their stock subscriptions, should have extended to them the right, if they desire, to terminate their stock subscriptions as of the date of the appointment of the Receiver and to have returned to them the monies which they have paid in since the receivership; and the court having fully considered the matter; and the Attorney General on the return of said order having moved that the order heretofore made by this court on January 4, 1929, dismissing the bill of complaint in a certain suit filed in this Court by the Attorney General against the defendant herein and against Financial Investment Corporation as a co-defendant, be opened and that said bill be revived as against said Financial Investment Corporation, and the Court being of the opinion that such motion should be denied;

Exhibit—Not marked. Record in Chancery, Samuel Klein vs. Universal Finance Corporation.

It is on this 19th day of February, 1929, ADJUDGED and ORDERED:

1: That the business of the defendant corporation should be continued and the assets and property of the defendant corporation turned back to the corporation and its officers and directors.

2: That the Receiver's account and reports be and the same are hereby approved and confirmed.

3: That the Receiver pay to Cohn & Company, accountants, the sum of $2,000; to Alfred L. Kirby, who was employed by the Receiver in investigating the affairs of the defendant corporation, the sum of $750; to Herbert L. Elins the sum of $3,000 as and for counsel fees for the complainant and also as compensation for services rendered by the said Herbert L. Elins to the Receiver, together with his taxed costs; that there be allowed to the Receiver the sum of $5,000 as and for his compensation, together with his taxed costs, no objection being made to any of the allowances aforesaid.

4: That those subscribers who have made payments to the Receiver on account of Preferred stock subscriptions since the appointment of the Receiver, who have not already elected by answer to the questionnaire of the Receiver or by agreement with the Preferred Stockholders Committee, to continue the business and be bound by their stock subscriptions, have the right to have returned to them the monies which they have paid in since the receivership, and the said Receiver is directed within five days of the date hereof to send notice of such right to said subscribers by mail to the addresses of the subscribers as known to the Receiver, and that if within five days after the sending of such notice the said subscribers shall not have elected to receive the monies back which they have paid to the Receiver since his appointment, they be considered as having elected to be bound by their stock subscriptions and to have no further right to the return of

the monies paid in after the date of the appointment of the Receiver.

5: That upon making the payments of the allowances, except the taxed costs, hereinabove mentioned, the said Receiver do deliver to the corporation and its officers all of the assets, books, papers and documents of said defendant corporation, including those delivered to the Receiver by the Prosecutor of the Pleas of the County of Essex, and including the said license, except such sum as shall in the judgment of the Receiver be sufficient to make payments to those subscribers who have made payments to the Receiver on account of stock subscriptions since the date of his appointment, as hereinbefore provided for, and the taxed costs, and that upon making such payments to such subscribers as this order directs or after the time fixed by this order for the subscribers to elect, and said taxed costs, the said Receiver shall pay over to the said corporation, its officers and directors the balance of said fund.

6: That all injunctive restraint contained in any order of this court heretofore made in this cause, be dissolved and that the said corporation be permitted to operate as if no Receiver had been appointed.

7: That said Receiver shall report to this court how he has complied with the terms of this order and upon his compliance with the terms of this order and reporting to this court, he be discharged and the bill be dismissed.

8: That in the meantime that this cause be retained for such other order or decree as may be necessary or proper to carry out the intent of this order, and application may be made by any party upon two days' notice to the corporation, the Receiver and the Preferred Stockholders Committee and the solicitor of the complainant.

E. R. WALKER,
C.

Respectfully advised,

ALONZO CHURCH,
V.-C.

New Jersey Court of Errors and Appeals

THE STATE OF NEW JERSEY, *Defendant-in-Error,* *vs.* ALEXANDER G. EDWARDS, DALE D. HOLLENBAUGH and DEWI T. EVANS, *Plaintiffs-in-Error.*	*On Error.*

BRIEF FOR THE STATE.

Statement of the Case.

The defendants, Alexander G. Edwards, Dale D. Hollenbaugh and Dewi T. Evans, were indicted, tried and convicted in the Essex County Court of Quarter Sessions, Honorable Daniel J. Brennan presiding, upon an indictment for a conspiracy to cheat and defraud divers persons by making public sale, by means of false pretenses, of the preferred stock of the Public Service Finance Corporation, afterward known as the Universal Finance Corporation (a small loan company), at a price which was fictitious and above the actual and market value thereof. And on July 1, 1929, the defendants were sentenced to the Essex County Penitentiary for a term of one year, which sentences were suspended and the defendants placed on probation for three years, and each defendant was fined $1,000 and costs, and ordered to make restitution.

A writ of error was taken from the New Jersey Supreme Court to the Essex Court of Quarter Sessions; under sections 135, 136 and 137 of our Criminal Procedure Act. Our Su-

preme Court, in an opinion rendered by Chief Justice Gummere and Justice Campbell, decided as follows.

Vol. VIII—N. J. Adv. Rep. No. 52, page 902 (not yet reported).

Per Curiam:

> "The plaintiffs-in-error were convicted upon an indictment charging them with a conspiracy to cheat and defraud divers persons by making public sale, by means of false pretenses, of the preferred stock of the Universal Finance Company (a small loan company) at a price which was fictitious and far above the actual market value thereof.
>
> Our examination of the proofs submitted in the court below has led us to the conclusion that the one hundred and seventy-six assignments of error and grounds for reversal submitted in this cause are each and every of them without legal merit.
>
> The judgment under review will therefore be affirmed."

Plaintiffs-in-error in this court, rely upon the same arguments which were presented by them before the Supreme Court. They have filed with this Court the very same briefs which they had filed with the Supreme Court; namely, an original brief and a brief in reply to the State's answering brief. In order to preserve the logical sequence of the arguments we deem it proper to present our argument in the same manner as presented before the Supreme Court; that is, our answering brief, and our brief in reply to the plaintiffs-in-error's reply brief.

ARGUMENT.

Plaintiffs-in-error have divided their argument into six points, but as points 1, 2 and 6 deal mostly with the facts of the case, we deem it advisable to argue these three points under one heading.

I.

The verdict was not against the weight of the evidence.

Plaintiffs-in-error have attempted to divide this point into two headings: one as "General Charge" of conspiracy, and the other, "The Specific Charges" of false pretenses.

The State has made but one charge against the defendants, to wit, a conspiracy to cheat and defraud the public by means of false pretenses. The so-called "Specific Charges of false pretenses" are the overt acts required by the statute, and proof of but one such overt act would suffice the requirement of section 37 of the Crimes Act, defining conspiracy, under which the indictment in this case was brought.

The gravamen of the indictment, therefore, is that the three defendants conspired to cheat and defraud the public by making public sale of certain stock by means of false pretenses.

Due to voluminous testimony taken in the trial of this cause, which lasted over eight full trial days, it would be impossible to relate the facts in detail. Nothing less than the entire record of the case, with its numerous exhibits, can give a true version of the evidence adduced, and even that will fall short of reproducing the trial as seen from the jury box, because the jury had the opportunity to observe and hear the witnesses,

and draw such inferences as they were entitled to draw from the fact that the defendant failed to put on the stand representatives of the office of Haskins and Sell, accountants, upon whom they claimed to depend for their figures and the good faith of their actions.

The following, therefore, is only a brief summary of the evidence adduced at the trial:

Alexander G. Edwards was a stock promoter of some experience. Dale D. Hollenbaugh was a radio broadcaster, *and Evans was an employee of the Attorney General's office of the State of New Jersey, working under Assistant Attorney General Richard Plummer,* in the enforcement of the provisions of the act regulating the public sale of securities. He was under Civil Service and received a salary from the State of $50 a week.

On March 23, 1928, Edwards organized The Public Service Finance Company (purporting to be a small loan company), the incorporators being Hollenbaugh, Evans and one Frank R. Tappan. 5,000 shares of no par value common stock were issued. Of this 33 shares were given to Tappan, paid for by Edwards, at 25 cents a share. Evans got 333 shares, also paid for by Edwards (p. 56, l. 18).

Richard J. Fitzmaurice was appointed director of the company and given 333 shares, also paid for by Edwards.

Dale Hollenbaugh was given 500 shares, paid for by Edwards: Belle Edwards, defendant's mother, had 1333 shares, paid for by defendant Edwards; L. H. Edwards had 1333 shares, paid for by defendant Edwards; T. P. Edwards, brother of the defendant, had 833 shares, paid for

by defendant Edwards. In all, 5,000 shares were distributed, all paid for by Edwards, but none held by him. He put $1,250 cash into the enterprise (State of the Case, pp. 55 and 56).

Besides these, Edwards paid for 105 shares of preferred stock at $10 a share, and gave 35 shares each to Tappan, Fitzmaurice and Evans. Edwards' name did not appear in the company, but Edwards' had control of the company through his family who owned 52% of the stock (Case, p. 56, l. 20 etc.).

Edwards had a contract to sell the preferred stock of the company, under the terms of which he was to receive 25% commission and pay all operating expenses and overhead expenses of the corporation up to June 30, 1928 (p. 57, l. 26).

A suit was brought in the Chancery Court of New Jersey, by the Public Service Corporation against the Public Service Finance Company to enjoin use of its name; a consent decree was entered and the name of the defendants' company was changed to the "Universal Finance Company."

Edwards then organized the Financial Investment Company to carry out the selling contract.

The sale of the stock was accomplished through talks over the radio, pamphlets, circulars, and personal calls by the salesmen, copies of which talks, pamphlets and circulars were put in evidence, and are reprinted in Vol. III of the State of the Case.

In all these radio talks and pamphlets, the emphasis was laid on the earnings of the corporation, and the security of the investment.

In the early part of July, 1928, a dividend of 10% was declared on the preferred stock, as of

June 30, 1928. The company had started business April 1, 1928. During this period, from April 1 to June 30, the company had a net loss of $846.19. This loss resulted from operating expenses, and does not take into account the depreciation in the value of securities held by the company, which showed a decrease in value of $13,781.12, being the difference between acquisition cost and the market value of the securities as of June 30, 1928, the dividend date. In spite of such losses, the company declared a dividend on the preferred stock of 10% as of June 30, 1928. Of this 10%, 6% was the initial dividend requirement, and the 4% was a 50% participation dividend; and the public was told over the radio and through circulars that this 4% participation was the result of "dividing *net profit* equally between Preferred and Common Stock." (Italics ours.) (Ex. S. 1, p. 725, l. 29.)

This dividend was declared merely to create sales talk to spur the sale of $750,000 more of preferred stock, and was immediately followed by circulars and radio talks, stating that the stock was now paying 10% dividend, and that it "participates up to 50% of the *Net Profits* after deduction of the preferred dividend requirements now paying an extra 4% in addition to the required 6%, or a dividend of 10% annually."

In circulars and talks addressed to prospective *stock purchasers* (*and not to small loan applicants*) the defendants stated that the business of the company was supervised by the Department of Banking and Insurance; that the company was an *Industrial Banking Institution,* Bonded to the State of New Jersey. How else could the public interpret this but to mean that the supervision of the company was similar to other *banking institu-*

tions, for the protection of *depositors and investors.*

To give further impetus to the sale of the stock, the public was advised that starting January, 1929, the dividend rate was to be increased to 12%, and that the price of the stock had already increased from $15 to $16 per share. The following is from a radio talk (p. 778, l. 26).

> "The directors of the corporation whose stock we are offering announced that due to the exceptional progress made by the corporation, this year, it was voted to increase the present dividend of 10% to 12% per annum, effective January 1, 1929. This dividend to be paid monthly in equal amounts of 1% per month. Also to advance the price of the shares from $15.00 to $16.00 a share, effective, December 12, 1928. Therefore, only tonight and tomorrow remain in which you may buy these shares at the $15.00 price."

From April 1, 1928, to January 4, 1929, the company had not only no profit, but a net loss of $1,734.81 (p. 191). Still the directors of the company, all "Skilled Financiers" (see p. 723, l. 10), thought they were justified in increasing the dividend rate from 10% to 12%, and the price, from $15 to $16 per share, and continued to represent to the public that these dividends were paid out of the fastly increasing earnings of the company.

We shall now take, point by point, the arguments set forth by plaintiffs-in-error, relating to sufficiency of the evidence.

Plaintiffs-in-error, arguing that the verdict is not sustained by the evidence, have attempted to divide the indictment into what they have termed the "general charges" and the "specific charges."

The indictment has but one charge, to wit: that the defendants conspired to cheat and defraud divers persons by making public sale, by means of false pretenses, of the preferred stock at a price which was fictitious and above the actual and market value thereof. The so-called "specific charges" are the overt acts, required by statute in charges of conspiracy to defraud, and proof of but one such overt act fulfills the requirements of the statute.

Under the indictment it was not necessary for the State to show that the stock was sold at a fictitious price above the actual and market value. It was sufficient for the State to show that the defendants conspired to sell the stock by means of false pretenses. The gist of the charge is the conspiracy to make misrepresentations to effect the sale of the stock Their ultimate purpose, their motive, was to sell the stock at a price above the real and actual value.

Plaintiffs-in-error have argued at length that the State has not proved any sales of stock at a price above the actual and market value. The indictment charges conspiracy. It is submitted, therefore, that it was not incumbent upon the State to prove the consummation of the conspiracy. And the State did prove that there was a conspiracy to sell the stock at a price above the real and actual value.

What was the real and actual value of the stock of a company, whose sole assets were the proceeds of the sale of the stocks, 25% of which constituted brokerage commission; a company which had no established business or reputation, and whose income was not sufficient to cover its operating expenses?

Originally the stock was sold at $14 a share. Then a dividend of 10% was declared and the

price was raised to $15. On January 4, its capital value was $10.80 (p. 193, l. 5).

Then the public was advised, through follow-up letters (Ex. S-4, p. 762), that the dividend of 10% is to be increased to 12% on January 1, 1929, *"all out of earnings, and still adding to the surplus account,"* and that "the increase in dividend rate will naturally cause a sharp increase in the price of these shares." Here is an argument basing the *value* of the stock upon the dividend rate; the dividend rate being false, naturally the price of the stock based upon such dividend rate, is also false and fictitious.

The actual value of the stock was entirely dependent upon the earning power of the stock, the management of the company and the nature of the business of the company. The defendants having misrepresented as to each one of these basic factors creating the value of the stock, they misrepresented the intrinsic and actual value of the stock, and the arbitrary prices of $15 and $16 placed upon the stock were fictitious.

The representations concerning the value of the stock were made by inuendo and implications, carefully planned to lead the public to believe that the stock was actually and intrinsically worth $15 and $16 per share.

Here are some statements made by the defendants concerning the value of the stock:

p. 750—Ex. S-5, ll. 24-38:

> "As you all know, this security pays a 6% *guaranteed* annual dividend, with a participation up to 50% in the net profits of the company."
>
> "Until January 1st, the participating dividend will continue at 4%, as now, or a total dividend rate until that time of 10% per annum. After January 1st, the participating

rate will be increased to 6%, or a total dividend of 12%."

Greater Dividends always mean a "RAISE IN PRICE OF STOCK."

p. 762, Ex. S-6, l. 12:

"In the near future an important announcement will be made relative to price advance. Do not let this opportunity pass, as now you may purchase this stock at $15 per share."

p. 779, Ex. S-6, l. 25:

"The Industrial Loan Corporation, whose shares we are offering, has been established on a *firm* dividend paying basis, at present paying 10%, and this to be increased January 1st, 1929, to 12%. What is more, it points to its *earning record* with confidence and pride. * * * Further, their business is under the supervision of the State Department of Banking, a *factor of safety not found in other lines of investment.*"

With such representations, the public was led to believe that the stock was worth $15 and $16 per share, being on a *"firm"* 10% dividend basis, "guaranteed" by a company with an *"earning record,"* and safeguarded by the Department of Banking and Insurance.

It is argued by plaintiffs-in-error that corrupt motive was not shown.

This was purely a question of fact, and, as has been stated by plaintiffs-in-error, the jury was properly charged on this point, and evidently they found that the motives of the defendants were corrupt; there was ample testimony to support this finding.

The motive of the defendants was to cheat and defraud the public; to sell stock by untrue statements and misrepresentations. All their activities,

from the time of organization of the company to January, 1929, were tainted with the lack of good faith.

Plaintiffs-in-error lay emphasis on the fact that the July, 1928, dividend was declared with the consent of Commissioner Fitzmaurice, a man of experience in financial matters. It is interesting to note what the Commissioner, a witness for the defense, had to say on the subject.

p. 271, l. 19, etc.:

> "I will make this flat statement, that any dividend voted by me was relying on Mr. Evans," * * *
>
> L. 30. "* * * —The question is, whether they, instead of explaining to you the condition of the books, whether they ever brought the books or statements to you and put the proposition up to you and asked you for your advice? A Oh, no.
>
> "Q As to whether or not those dividends should be paid? A No, that was never done."

p. 272, l. 17:

> "You did not give them the benefit of your experience? A **I was not asked to.**
>
> Q When you found out a day or two before Christmas what was going on, you say that you immediately called a meeting on the day after Christmas, at 9 o'clock? A The first available time that Mr. Evans and Mr. Hollenbaugh and I—I was down there at 9 o'clock and waiting for the office to open."

Then the Commissioner insisted that the sale of stock be stopped; and the next day he resigned.

The Commissioner entered the company under the impression that all the capital stock had been sold or subscribed for. He didn't even know of Edwards' brokerage company, or its methods of sale (pp. 264 and 265).

The public was told that the stock was safe, "otherwise we could not broadcast it over the radio without the consent of the Government" (p. 87, l. 32).

And this "consent of the government," referred to a letter (Ex. S-10, p. 844) secretly written by Evans, one of the defendants, *who was at the time employed in the Attorney General's office of New Jersey, on the Attorney General's stationery,* addressed to Dale D. Hollenbaugh, another defendant, who was at the time broadcasting over station WABC. The letter was written without the knowledge of the Attorney General, or his assistant, Mr. Plummer, and the carbon copy was kept, not in the regular file, but locked in a tin box personally belonging to Evans, and kept in his desk (pp. 283-285).

And the public was advised, through a form letter (Ex. S-4, p. 742) that

> "Broadcasting security offerings over the radio is permitted only after a *very thorough* investigation." That "The treasurer of the corporation, Mr. Dewi T. Evans, is a State Examiner, Division of Securities, Attorney General's Office, of the State of New Jersey."

But their activities were kept a secret from the Attorney General, or his assistant, Mr. Plummer, in charge of the Securities Department.
that;

> "This industrial banking corporation licensed, bonded and supervised by the Department of Banking of the State of New Jersey. In other words, its business is under State control" (p. 773, ll. 15-20).

This talk was addressed to prospective investors and not to borrowers. The defendants knew that the supervision is simply for the protection of the borrower and does not go into the investments or business enterprises of the company with regard to protecting and safeguarding the investors, as is done in the case of banks. And this is the very impression which the defendants tried to and did create in the minds of stock purchasers.

As a climax in their scheme to lead the public to look upon the company as a banking institution, the following was circularized:

> "All financial institutions to which life is granted by the State are created to perform a specialized work in the interest of society. Accordingly, we have the Federal Reserve Bank, Federal Land Bank, National Banks, State Land Banks, State Banks or Discount, Trust Companies, Savings Banks, Building and Loan Associations, and Industrial Banking Corporations such as UNIVERSAL FINANCE CORPORATION."
>
> "To outline the powers and duties of the various classes of financial institutions would require more space than is available in this leaflet. It is enough to say that each is unique in its field and is indispensable in the economic machinery of society which gives it life by charter. Each institution is operated under special legislation of the Federal or State Government that has chartered it, and special departments of government are provided to supervise it and to enforce the law" (p. 730, ll. 1-15).

We deem it unnecessary to argue further concerning lack of good faith shown by the defendants. The jury had ample evidence upon which to decide whether these men were making innocent errors, or deliberately carrying on a stock-selling campaign built upon false representations.

Under the second heading of their brief, plaintiffs-in-error argue that the State failed to prove the specific charges of false pretenses as particularized in the indictment.

One of these so-called "specific charges," which are in fact the overt acts, was that the defendants falsely represented to the public that the stock sold by them "was paying dividends at the rate of 10% annually, which dividends were being paid out of the earnings of said corporation" (p. 7, ll. 14-17).

It was neither alleged nor attempted to be proved by the State that the payments of dividend on July 2, as of June 30, was illegal, or fraudulent in itself. This is not an indictment under the statute governing the declaration of dividends. The charge is that they represented that these dividends were from net profits, which is not denied by plaintiffs-in-error, and which representation was false.

Julius H. Cohn, expert accountant, testified that on June 30, 1928, the gross income from all sources was $200.19, and the operating expenses were $1,046.38, with a net loss of $846.19 (Case, pp. 179-180). As of that date, a dividend of $1,208.75 was paid, and the public was told that this dividend was from net profits. On June 30, 1928, the company held securities, the acquisition price of which was $168,661.29, and the market value of $154,879.37, showing a depreciation of $13,781.92. That is, on June 30, 1928, the company had a decrease in assets amounting to $14,-628.11 (p. 173, l. 15, etc.).

To rebut the testimony and figures given by Mr. Cohn, the defendants did not put on the stand members of Haskins and Sells, the well-known accountants whose names were used so

freely in their advertisement material, as having full charge of all detail work, although representatives of Haskins and Sells were in court (p. 541, l. 18). The defendants do not even claim that the declaration of the June 30 dividend was based on figures submitted by Haskins and Sells. Instead, they claim to have depended upon a rough-shod, haphazardly prepared memorandum by Mr. Evans (Exhibit D. 23, p. 920), one of the defendants, a glance at which discloses the lack of care and accuracy with which it was prepared. It is a marvelous piece of work, showing all the profits, whether real, potential or prospective; and no loss.

Taking all figures most liberally in favor of defendants, on June 30, they could still not show any net profits, due to the depreciation in value of the securities held by the company.

Mr. Evans, in his pencil-memorandum, put down as income, an item of $900 as potential income on securities held by the company. Of this, only $165 was dividend declared by the companies. The other $735 was mere prospect, or hopes, based on the expected earnings of the different companies whose securities the Universal Financial Company held. This item was not properly and in good faith placed in the income column, and Evans knew it. He was an accountant, had worked for many years in the State Comptroller's office, and in the Attorney General's office. He conducted a business as investment counsellor, and during his many years of close association with such matters, he had never heard of such an item being set up as earned asset, or being taken into consideration in awarding a dividend (p. 548, l. 12). And he did not consult Haskins & Sells (p. 548, l. 18).

Plaintiffs-in-error argue that the memorandum prepared by Evans "shows an increase in the assets of the company up to that date, amounting to the sum of $2,246.78." But this "increase" in assets does not take into account the decrease in assets to the extent of $13,781.92 due to depreciation in value of securities. It is evident that the item of $900 was not an income, nor was it an increase in assets, because whatever value such potential or apportioned dividends have, such value is reflected in the value of the securities. Assuming, however, that the $900 item represented an increase of assets, it was more than offset by the decrease above mentioned.

As for the "rights" the Universal Financial Company had, which were set up as income amounting to $657, these, too, were not earned income, and Mr. Evans did not think so.

On cross examination he was asked (p. 550, l. 32):

> "Q Did you on the 14th of June, consider them as earned income? A No, I think not."

Then, on page 552, line 21:

> "Q Did you ever, in all your experience with corporations, find rights such as were present in this case credited to the earnings of the company? A No."

Admitting that this item of $567 was an asset of the company, it was not an earned income, and whatever increase it created in the assets of the company was more than offset by the decrease above mentioned.

Plaintiff-in-error argues that the directors had the right to declare the dividend from the surplus. That is not disputed, but that is not the point. Having declared dividend from the sur-

plus, and not from earnings, the defendants represented that the 10% dividend declared was from net earnings.

Corrupt Motive.

Plaintiff-in-error argues that there was no corrupt motive in declaring the June, 1928, dividend, and states that "the subject matter of the declaration of this dividend was carefully considered by the then directors of the corporation, to wit, Commissioner Fitzmaurice and the defendants," and that "the Director of Revenue and Finance of the City of Orange, (meaning Mr. Fitzmaurice) when the figures were presented to him, made no objection to the declaration of the dividend." In view of Mr. Fitzmaurice's testimony on the subject, this is a rather poor attempt to show good faith. We quote the following from his testimony.

p. 271, l. 19:

> "Any dividend voted by me was relying on Mr. Evans."

l. 37:

> "Q So therefore as far as your opinion went and the use of your experience in this business, these defendants did not rely on that in the payments of these dividends? A No, maybe I relied on Mr. Evans.
>
> "Q Exactly. You relied on them but they did not rely on you, isn't that a fact? A I wasn't shown any sheet to analyze a statement or any books or anything of the kind. I was advised that Haskins and Sells were the accountants. That was good enough for me."

It appears, then, from Mr. Fitzmaurice's testimony, (he being defendants' witness) that he, too, was given the false impression that the

declaration of dividends was passed upon by Haskins and Sells.

As evidence of good motive defendants attempted to show that they applied for a license in Pennsylvania.

We fail to see how the opening of an office in Pennsylvania would show good faith assuming that the money realized from the sale of stocks was to be used for such purpose. The charge of corruption was in the method used for the sale of stocks, and not the use made of the funds. In this respect, it is enough to note that 25% of all proceeds went to the Financial Investment Company, (of Edwards) for commission; this amounted to $178,000.

The State did not offer proof of anything as of any date after January 4, 1929, "because after that date there was no further sale of stock." Therefore, any application for license made in Pennsylvania in March, 1929, was entirely irrelevant to the State's case, and properly rejected. This alleged error in rejection of evidence was not assigned for error, and cannot be cause for reversal.

Supervision by the State.

The indictment alleges that the defendants conspired to sell stock by means of false pretenses. One of the false pretenses used was the representation that the company was under the supervision of the Department of Banking and Insurance.

To determine whether or not this statement was true, we must first decide what thought it was intended to convey to the public, what did the public understand by it, and what inferences

were naturally drawn from it. It is obvious that the statement cannot be taken as an isolated sentence.

It is important to note that the statement was made not to prospective borrowers, but to prospective investors. The rules and regulations made by the Department of Banking and Insurance for the conduct of Small Loan Companies, and all the supervision the Department exercises over such companies pertain merely to the relations between the company and the borrower. This is admitted by counsel for defendants. (Brief, p. 44, l. 6.)

The statement was made with the deliberate intent to create the impression that such supervision was a protection to the stockholders, and was the same as the supervision exercised over Federal Reserve Banks, National Banks, Trust Companies, State Banks, Savings Banks, and other Financial Institutions, and that was the sole logical inference the public could draw.

The following are only a few of the representations made in this regard:

p. 723, l. 16, etc. (Italics ours):

> "Why risk your money by investing it where it may be lost to you, when there are so many safe investments that have a high return, such *as bank stocks* and loan stocks."

p. 723, l. 27:

> "Officials of this Corporation are all men having an intimate knowledge of the investment and *banking business.*"

p. 730, ll. 36-40:

> "Individual financing is to the individual what commercial banking is to the retail store, or mortgage loans are to the home builder.

"The Department of Banking and Insurance of the State of New Jersey makes a periodical examination into the affairs of this Corporation."

p. 740, ll. 38-40:

"The National Banks of the United States have an Annual Profit Return on their Capital of more than 24%."

p. 748, ll. 27-31:

"But, be sure the company whose shares you buy is a licensed, bonded, reputable company whose business is under the supervision of the State Department of Banking in the State in which it is authorized and carrying on its business."

p. 761, ll. 10-20:

"Right now, I want to say, that I consider a person who is fortunate enough to own stock in one of our *banking institutions* a privileged citizen. Why do I say that? For this reason: All financial institutions to which life is granted by the State are created to perform a specialized work, in the interest of society, such as *National Banks, State Banks,* Trust Companies, Savings Banks and Industrial Loan Institutions.

"These financial institutions are either under Federal or State laws. *And this, ladies and gentlemen, is a factor of safety not found in other lines of investment.*"

The intended, as well as the logical meaning of all this comparison between various types of banks and the Universal Finance Company, and putting forth State Supervision as a factor of safety common to all these institutions, was that the supervision exercised over the company was the same as that exercised over banks for the protection of the investor and depositor.

The defendants, who admit they are men of experience in the "banking business," knew very well that the examiners of the affairs of their

company did not care whether their investments were *safe* or not; or, whether the loans made were properly secured or not; in fact, they were not concerned with the protection of the investor and stockholder. Their examination was no *"factor of safety,"* and the defendants knew this. As for the practice of examiner to report violation of the General Corporation Act, this was merely casual and incidental, and no more true of this company than of any company organized under the General Corporation Act. The Attorney General, with his power to bring *"quo warranto"* proceedings, has that much supervisory power over all corporations, and yet no corporation could justly set forth such supervisory power of the Attorney General as a "factor of safety," and then class itself with Banks and Trust Companies.

Counsel for defendants urge that there was no evidence of any violations of the statutes, either the Small Loan Act or the General Corporation Act. It will suffice to state that this indictment does not charge violation of either act.

Bond to the State of New Jersey.

The State further charged that in execution of the conspiracy, the defendants, in addresses over the radio, falsely represented that the company was under bond to the State of New Jersey.

This representation, similar to the one relative to supervision by the Department of Banking and Insurance, was true, if taken as a statement; but taken with its surrounding circumstances, with the intent and purpose back of it, and the impression it was meant to create and did create, was plainly a falsity.

The section of the laws of 1914, pertinent to the question of bonding has been quoted in full by counsel for plaintiffs-in-error, on page 47 of their brief, as a justification for the statement. As appears from said quotation, the required bond, in the sum of $5,000, is

"For the faithful observance of all laws relating to such business." (The small loan business.)

This bond, it is evident, is required for the protection of borrowers, so that they may not be charged excessive interest, or extra fees, etc. It offers no protection or indemnity to investors in the stock of the company, which is just what the public was led to believe.

In their radio talks to prospective investors, the defendants said:

> "Industrial Loan Institutions engaged in the business of Industrial Banking are licensed, *bonded* and supervised by the State Department of Banking and Insurance of New Jersey" (p. 758, l. 39).

p. 764, l. 1:

> "And the corporation is licensed, *bonded* and its business supervised by the Department of Banking and Insurance of the State of New Jersey. That in itself is the reason the public at large is buying this stock for investment."

They have thus offered to the investing public, and not to borrowers, an inducement, the fact that the company was bonded. The prospective investor was naturally led to believe that such bonding was for the indemnity and protection of investors. This was a falsity.

Character of the Stock.

The character of the stock was misrepresented in that it was not participating in 50% of the net earnings and paying dividends at the rate of 10% annually out of the earnings of the corporation.

True, that the stock sold was preferred stock, as represented; and that it had the right to participate in 50% of net earnings; but that was not all the representations made as to the character of the stock; it was also represented that it was paying 10% annual dividends out of the earnings, and this was false.

We are not concerned here with the written statements found on the stock certificates, and the term "character of the stock" can not be confined to such statements. The character of the stock depended on various items; its safety, earning power, type of the company, etc.; any one of these items being falsified, the character of the stock was misrepresented.

The Dividend Rate.

The date of the conspiracy as charged in the indictment is March 28, 1929; the State charged that in execution of this conspiracy the defendants committed certain overt act; among them, the radio talks, circulars in which it was represented to the public that the company was paying 10% dividends out of the net earnings of the company. These misrepresentations were made at various times in 1928, concerning the dividends of June 30, 1928, September 30, 1928 and December 30, 1928. Plaintiffs-in-error do not even contend that these dividends were paid out of net earnings, as represented to the public at various times in 1928; but claim that had they been allowed, they would have shown that in

March, 1929, they could have paid, had they not been involved in Chancery suits, enough dividends to justify the representations. We are not concerned with dividends paid in March, 1929. The State neither attempted to prove nor alleged any misrepresentations as to such dividends; and we fail to see how dividends paid in March 1929 justify or explain misrepresentations made as to dividends paid in June, September, and December, 1928.

In regard to dividends paid in September, 1928, plaintiffs-in-error are again arguing over an immaterial subject, when they attempt to show that said dividends were justifiable by reason of the surplus paid in (p. 59 of brief of plaintiffs-in-error). Again we deem it sufficient to state that the question is not whether the dividends were legal or not, but having been paid out of surplus, was it represented to the public that they were paid out of net earnings.

Then again, plaintiffs-in-error attempt to show that by certain methods of accounting the December, 1928 divided could be said to have been out of earnings (p. 63 of plaintiff's brief). Assuming for the moment the good faith and justice of the dividend of December, 1928, that still does not disprove the conspiracy entered into in March, 1928, and the overt acts in execution of such conspiracy committed in July and September of 1928.

Misrepresentations to Various Individuals.

After charging conspiracy as of March, 1928, the State charged that in execution of such conspiracy the defendants made certain false representations to one Joseph Armour and Henry Harmeyer.

The State proved by these witnesses that they came to buy shares of the company from the defendants because they heard them broadcasting over station WABC (p. 80, l. 9). Mr. Armour further testified that he saw Mr. Cawthorne, a member of defendants' office, and that Mr. Cawthorne spoke highly of Mr. Evans, one of the defendants, mentioning the fact that Mr. Evans was connected with the Attorney General's office; and that, influenced by the radio talks, and with the talk he had with Cawthorne, he bought 10 shares, and paid $150.00 for same (p. 81).

Mr. Harmeyer testified that he lived in Marmarneck, New York, and, influenced by the radio talks, he came to the office of the defendants' company at 810 Broad street, Newark, and saw Mr. Urmston, of defendants' office. He asked if the stock was perfectly safe, and Urmston said, "Otherwise we could not broadcast it over the radio without the consent of the government" (p. 87, l. 31). He bought $1,050 worth of it at $14, having been told that it was at the time on a 10% basis. Then hearing over the radio that the dividend would go up from 10% to 12%, and that the price would be increased to $16 per share, he bought 25 more shares.

The purpose of Mr. Armour's and Mr. Harmeyer's testimony was to show overt acts in execution of the conspiracy, and that was done.

The State produced numerous other witnesses, the essence of whose testimony was that they

heard about the stock over the radio; that the defendants, or their representatives, stated that they were in the banking business (p. 95, l. 33); that the company was earning and paying 10% (p. 99, l. 17), and that the dividend rate would increase to 12%; that they received the pamphlets and circulars of the company (p. 103, l. 9); that they were told the company was under the supervision of the Department of Banking and Insurance (p. 104, ll. 10-15); that the company was bonded to the State of New Jersey (p. 109, l. 30), and that all of these witnesses, by reason of these representations, bought stock in the company. These matters were adduced as evidence of the conspiracy entered into in March, 1928; they were evidences of overt acts; and it was not incumbent upon the State to prove, in each individual case, the statutory charge of obtaining money under false pretenses. All the argument of plaintiffs-in-error is directed to the claim that the State did not prove obtaining money under false pretenses in each case, which is all out of point.

In *State* v. *Young,* 37 N. J. L. 184, at page 189, the Court (*C. J.* Beasley) said:

> "For all the pleader, by force of the crimes act, is required to do, is set forth 'some overt act' done to effect the object of such conspiracy. Such overt act may or may not be in itself criminal. The conspiracy is the crime, and the overt act bringing it within the requirement of the statute, may be a very insignificant affair."

In conclusion, it is submitted that there was ample evidence to justify the verdict of the jury, that the defendants, on the 28th of March, 1928, conspired to cheat and defraud divers persons by making public sale of the stock of the Public

Service Finance Corporation, later known as the Universal Finance Corporation, by means of false pretenses, at a price which was fictitious and above the actual and market value thereof. However, it was not the duty of the State to prove the means by which the conspiracy was to be accomplished, and evidence sufficient to justify the conclusion that the defendants entered into a conspiracy to cheat and defraud is all that is necessary to sustain the verdict.

It is the decided law in this State that a general charge in an indictment of a conspiracy to cheat is sufficient without setting forth the means to be used.

State v. *Young,* 37 N. J. L. 184.
State v. *Madden,* 57 N. J. L. 324.

And the fact that the indictment does recite the means used does not burden the State with proof of them.

> "The essence of a conspiracy is the unlawful combination, and if the object of the conspiracy is some unlawful act the means by which the act is to be accomplished need not be set forth in the indictment, *and if set out, the averment is surplusage and need not be proved.*" (Italics ours.)
> *U. S.* v. *Weiss,* 293 Fed. 992.

It is an elementary rule that where there is evidence from which the jury might properly find the defendant guilty the issue is one for the determination of the jury, and the Court will refuse to direct a verdict of acquittal on the ground that there was no legal evidence of the defendant's guilt.

State v. *Krupin,* 100 N. J. L. 7.

To justify the setting aside of a verdict as against the weight of the evidence, it must be so

clear as to give rise to an inference that it was the result of a mistake, passion or prejudice.

> "The Court should not set a verdict aside, even although, in its opinion, the jury might, upon the evidence, have found otherwise."
>
> *Queen* v. *Jennings*, 93 N. J. L. 353;
>
> *Knickerbocker Ice* v. *Anderson*, 31 N. J. L. 333.

To determine whether the verdict is against the weight of the evidence, the court of review weighs the evidence in the same manner as upon a rule to show cause in a Civil Case where the reason assigned is that the verdict is against the weight of the evidence.

> *State* v. *Morehouse*, 97 N. J. L. 285;
>
> *State* v. *Fisher*, 97 N. J. L. 34.

It is respectfully submitted, therefore, that the verdict is sustained by the evidence.

II.

The trial court properly excluded from the evidence the various offers of the defendants to prove the financial status of the Universal Finance Corporation subsequent to the last sale of stock.

This takes up assignments and specifications 8, 9, 12 and 15, 39, 45, 48, 49, 51, 52, 53, 54 and 56. Defendants' arguments concerning these points will be found under IIa and IIb.

On page 46 of their brief plaintiffs-in-error claim it was error to overrule a question asked of Mr. Evans whether or not the payment of the 12% dividend was from earnings (p. 512, l. 10). The increase of the participation feature of the 6% preferred stocks from 4% to 6% was effective beginning January 1, 1929. Accordingly a dividend on a 12% per annum basis would cover

a period after January 1, 1929, and would in no way tend to disprove any fact proved or claimed by the State. The State contended and proved misrepresentation as to dividends of June 30th, September 30th, and December 31, 1928. The question asked would not show that any of these dividends were from net earnings. The first quarterly dividend on the 12% basis would not be due until after March 30, 1929, covering the period from January 1st to March 30, 1929, and it was entirely immaterial whether or not such a dividend was from the earnings.

On cross examination of the State's witness, Joseph S. Armour, counsel for defendants asked if he had received two more dividends in March, 1929 (Case, pp. 84 and 85). This question was properly excluded. It had no bearing on the representations made in 1928, to the effect that the 1928 dividends were out of the net income of the company. The State never put in issue the question whether or not any dividends were paid in 1929; nor the source of such dividends. The question was entirely out of the scope of the proof submitted by the State.

Assignment 12 brings for error the refusal of the trial court to allow counsel for the defendants to ask Henry Harmeyer, a purchaser of stocks of the Universal Finance Corporation whether or not on all of his subscriptions he had received the dividends represented by anyone connected with the company that the stock was paying.

This question was properly excluded (p. 90, l. 36) because the receipt of the dividends was not in issue. The State did not contend that any stockholder received dividends less than what he was represented that he would receive. The contention of the State was that the defendants mis-

represented the source of such dividends, and the question, the rejection of which is argued for error, had no bearing on the issue and was irrelevant.

A similar question was asked the witness John Thomas, and excluded (Assignment 15, p. 113, l. 5). Again the question attempted to show whether or not the witness had received dividends on his stock, which was neither disputed nor put in issue by the State.

Assignment 45 covers the question whether or not, on March 30, 1929, the securities purchased by the company showed a profit or loss.

Assignment 48 again refers to dividends declared as of the close of March 30, 1929.

Assignment 49 refers to dividends declared after January 1, 1929.

Assignments 51, 52 and 54, all relate to attempts of the defendants to prove the financial status of the company as of March 30, 1929.

Assignments 56 covers exclusion of the question whether or not prior to March 30, 1929, the company made applications for a license to operate a small loan company in Pennsylvania.

All of these questions, the rejection of which is argued for error, were clearly immaterial, being beyond the scope of the proof submitted by the State.

To prove that these defendants, or any of them, invested the proceeds of the sale of the stock in good and profitable securities would prove nothing material to the issue. They are not charged with embezzlement of the funds, or any similar charge. The State admits that they purchased high class securities; that they paid 10% dividend

on their stock; that the balance sheets of the company as of March, 1929, might show increases; but all that is outside the issue. The answer to these questions could not in any way contradict or rebut proof adduced by the State that these defendants misrepresented the source out of which the June, 1928, and September, 1928 dividends were paid.

What the defendants did in 1929, or the financial status of the company in March, 1929, cannot in any way justify representations made as to 1928 earnings of the company made by the defendants in 1928.

It is argued by the defendants that these questions relate to the history of the corporation during the period covered by the indictment. This is not so. The indictment charges a conspiracy entered into by the defendants on March 28, 1928. Then the indictment recites the overt acts, that on the first day of July, 1928, and on other days between that day and the date of the inquisition, the defendants did certain acts in execution of their conspiracy.

All of defendants' argument on these assignments is centered on the point that the 1929 dividends were from the earnings of the company; admitting all of that, we fail to see how that justifies a statement that in the June, 1928 dividends of 10% were from the net profits of the company. That is the misrepresentation which was offered in evidence and proved by the State.

As for the Financial Statement prepared by Haskins and Sells as of March 30, 1929, the rejection of which is the basis of assignment 53, defendants claim that the statement would show the value of the stocks, which the indictment charges, the defendants misrepresented.

The defendants do not even contend that the status of the company in June, 1928, in any way compared with the status of the company in March, 1929. The March, 1929 balance sheet may have shown a favorable balance by reason of an advance in the price of securities held by the company in 1929. The balance sheets taken as of March, 1929, do not show or tend to show the value of the stocks as of June, 1928.

That the date comes within the period covered by the indictment does not mean that the statement offered would tend to disprove any facts proved by the State.

Defendants offer as proof of the value of the stock the fact that the company paid three dividends at the rate of 10% and then increased it to 12%. That is just the point; these first three dividends were paid out of surplus, and the public was told that they were out of the net earnings. The defendants were precluded from attempting to prove that in 1929 the company made enough to make good its deficits, and decrease of assets in 1928. That fact, even if proved, would be no justification of representations made in 1928 that the several dividends were paid out of earnings.

The statement of March, 1929, was therefore properly rejected.

III.

Assignments 35 and 36.

These bring up for argument the refusal of the trial court to receive in evidence the files of the Court of Chancery in the suit brought by the Attorney General against the Universal Finance Corporation, and the files of said court in the suit

between Klein, complainant, and the Universal Finance Corporation, defendants.

The offer, the objection and the argument relative thereto will be found on pages 285-298, of the case.

Counsel for defendants, in his brief, does not state on what ground, under what theory of law, for the proof of what question of fact, these files were admissible.

During the argument before the trial court, counsel based his offer of these files on two grounds:

1. That the decision of the Court of Chancery, dismissing the complaint filed by the Attorney General under the Securities Act of 1927 makes the matter *res adjudicata* (p. 290, l. 15):

2. That these litigations would explain why the January, 1929 dividend was not paid until March, 1929 (p. 289, l. 20).

The first ground, urging the decision of the Vice-Chancellor as *res adjudicata* in a criminal trial, is quite a novel one. It will be noted that no plea in abatement was made on this ground, although defendant offers the chancery files as proof of former jeopardy.

It is not contended by defendants that the issue in the chancery cases was the same, to wit, the criminal conspiracy of the defendants; or that the Vice-Chancellor had jurisdiction to pass upon, or that he did pass upon, the criminal aspect of the case.

It is elementary law that the decision of the civil courts or their records are not admissible in a criminal trial.

The second ground urged by defendants is not controlling on the point, for the simple reason that there is no charge by the State that these defendants failed to pay a dividend which they promised to pay.

The files in the chancery case were not admissible because the parties in that case were different from the parties in the present case.

Nor are the chancery files offered to prove any testimony given in the present case.

The chancery files were offered for the sole purpose of showing that the Vice-Chancellor dismissed the bill; defendants were not ready to show the reason and the facts upon which the chancery decision might have been based.

The defendants merely wished to show that another tribunal had before it a similar complaint, and had decided to allow these same defendants to continue to run the business of the company. The Chancery Court was merely interested in preserving the assets of the corporation, and not interested in the maner in which these defendants created that corporation, or sold its shares. These defendants may have been very capable executives, and for that reason allowed to continue to run the business; but if they conspired to sell the shares of the corporation by fraudulent means, they are criminally liable, despite their efficiency in business management.

It may be noted here, that in recommending that the stockholders vote upon the question whether or not the corporation should be dissolved and liquidated, Mr. Lane was acting only as custodial receiver, and his reasons for the recommendation was that liquidation would mean a loss to the stockholders. In his report he said,

however, that in the sale of the stock the public had been deceived.

It is submitted that the chancery files were properly rejected.

IV.

Assignments 18, 19, 21, 24, 27, 35, 36, 37, 38, 40, 50, 57 and 58.

These assignments refer to the Court's rulings on admission or rejection of evidence.

Assignments 18 and 19.

Over the objection of the defendants the Court permitted Julius Cohn, expert accountant, to answer whether or not the dividends of June 30 and September 30, 1928, were paid out of the earnings of the company.

Plaintiff-in-error again goes on an irrelevant line of argument asserting that the Corporation Act of New Jersey allows dividends from surplus aside from net profits. The plain purpose of the question was to determine whether the dividends were from earnings or from surplus; thus to make it possible to determine whether a subsequent representation that the dividends were from net earnings was true or not.

Whether the funds used for dividends were from earnings or not was a question of fact upon which an expert accountant, who had examined all the books of the company, was competent to express his opinion. What is more important, Mr. Evans could not deny, as has been shown above, that several of the largest items comprising the fund out of which the dividends were paid, were not earned income.

Counsel for plaintiffs-in-error claims that similar question asked Mr. Evans was rejected by the Court (p. 512, l. 20). The question, the rejection of which is argued as error, was as to dividends effective after January 1, 1929, and could not, therefore, rebut any facts proved by the State, which were all prior to January, 1929. Assuming that dividends declared after January, 1929, were out of earnings, since the State does not contend that any misrepresentation was made as to those, the matter becomes entirely irrelevant.

Assignment 21.

This assignment is listed in Appendix "A" in the brief of plaintiffs-in-error as having been argued under V (a), although no mention of the assignment, or the rejected question by number, or otherwise, is made in the argument. Assuming, therefore, that the argument under V (a) pertains to assignment 21, this brings up for argument the rejection of the question asked Mr. Cohn, by the defense, on cross examination.

P. 210, ll. 17-23.

> "Can you tell this Court and jury whether there was a single stock which the directors of the company purchased out of the moneys of these stockholders which did not appreciate in value and was sold at a profit at the time of the sale which you considered?"

The sole purpose of this question was to show that the defendants, as executives of the Universal Finance Corporation, had made sound investment, to negative a supposed contention by the State that they had invested the company's money in doubtful securities. This is the admitted purpose; but, there was no such contention by the State. Throughout the trial, over and over again, it was emphasized that these defend-

ants were not charged with misuse of the corporation's funds, but with a conspiracy to defraud prospective stock purchasers.

The question was objectionable on the further ground that it was not confined to the June and September, 1928 dividends. It covered the period up to March 30, 1929. It is mere repetition to state that any profits realized in 1929 would not in any way justify representations made in 1928 as to 1928 profits and earnings.

Assignment 24.

This assignment, we believe, is attempted to be argued on page 46, under subsection (2), although no reference is made to the assignment or rejected question.

Following is the relevant parts of the testimony of defendants' witness, Mr. Fitzmaurice: P. 275, l. 36, etc.

> (Direct.) "Are you able to remember the figures given to you by Mr. Evans from Mr. Hollenbaugh or anyone else which led you to believe that a dividend was justified?
>
> "The Court: As of what time?
>
> "Q Any of the dividend periods? A No, I wouldn't remember the figures.
>
> "Q Those figures included the surplus and net profits officially issued. Then was that a proper action by your board?"

This last question was objected to, and properly excluded.

The question included an unwarranted statement of fact that the figures included net profits officially issued. The Court will recall that the testimony of defendants shows that the figures submitted were pencil memoranda, and had no official character.

The propriety of the action of the directors was a conclusion to be derived from other facts, and not for the witness to state whether the action taken by the board was proper or not.

The propriety of the action of the directors in declaring a dividend was entirely out of the issue. The question was not whether each dividend was properly declared or not; but whether or not it was declared from earnings, and if not, whether the public was told that it was paid out of the net earnings.

Assignments 27 and 40.

These two assignments are argued under I (c) in brief of plaintiffs-in-error (pp. 29-30).

It is argued by plaintiffs-in-error that it was error not to receive in evidence a letter written by an Assistant Vice-President of the New Jersey National Bank, addressed to whom it may concern, to the effect that the business of the company is supervised by the Department of Banking and Insurance.

The whole argument of the plaintiffs-in-error is entirely out of point, because the letter states nothing that is not admitted by the State. The State admits that the company was under the supervision of the Department of Banking and Insurance. That is not the point. The point is, that the statement was used in a misleading way, to create the impression that such supervision was for the protection of the stockholders, and a factor of security. The defendants were all men of experience; they had able counsel, and one of them was in the Attorney General's office. They knew that the supervision they spoke of is only for the protection of the small loan borrowers. They do not even claim that Parker Silzer, As-

sistant Vice-President of the bank, the writer of the letter, was their counsel. And if anything appears from the use of the letter, it appears, not that the letter was the cause of the representations made by them, but that it was obtained for the very purpose of strengthening the false impression which they were creating in the minds of the public to the effect that such supervision was the safeguard of investors and stockholders. They compared the supervision of their company with the supervision exercised over the Federal Reserve Banks, Trust Companies, Savings Banks, etc. The letter did not warrant any such comparison and was, therefore, of no value and irrelevant as to good faith.

Plaintiff-in-error admits that the letter was not admissible as evidence of the truth of its contents.

As regards the renewed attempt to put it in evidence (p. 420) during the testimony of Roat, a salesman, it was again inadmissible because the State did not claim that Roat misrepresented the contents of the letter; the State did not even claim that the contents of the letter were untrue. It is the method in which these statements were used—that this is an industrial banking institution—and that it is supervised by the Department of Banking and Insurance, that constituted the fraud.

Assignments 35 to 38, Inclusive.

The State was properly allowed to ask the defendant, on cross examination, whether or not the income from the small loan business was sufficient to pay the June, 1928 dividend.

It is argued by the plaintiffs-in-error that the indictment does not charge that the defendants

represented the income to have been only from the small loan business.

The purpose of this question was to show by process of elimination that defendants must have known there was no actual source of income.

This is an indictment for conspiracy to cheat and defraud. Under this charge the State was entitled to prove any form of false pretense employed by the defendants, whether or not such false pretense is alleged as an overt act. The statute requires that the indictment aver some act in execution of the conspiracy; but this in no way operates to limit the proof of the conspiracy. Any evidence tending to prove the conspiracy would be admissible.

State v. *Young,* 37 N. J. L. 184.

There was ample evidence adduced by the State to warrant the question. Even though defendants may not have in so many terms stated that the dividends were from net profits of the small loan business, the logical result of their radio and circular advertising was the creation of such an understanding.

First, they state that they are engaged in a most profitable business, to wit, the small loan business; then they state that because of the profitable nature of the business they are engaged in, they have been able to pay 10% dividends; and finally, that such dividends are from earned income and net profits. The sole inference to be drawn from this is that the dividends are from the earned income of the small loan business, and at no time did the defendant mention or hint to prospective stock purchasers that their income was from profits realized or to be realized from trading in securities.

The question could have had no prejudicial error because the evidence shows that the income from *all* sources was not enough to cover the dividends; therefore, the defendants cannot complain that although the income from small loans was not enough to cover the dividends, the net income from all sources was.

If there was any possible error in the admission of the question, that error was clearly purged by the charge, which was:

> 17. "The allegation in the indictment is that the defendants or some of them caused dividends to be paid to the holders of preferred stock of the Universal Finance Corporation, although the same had not theretofore been earned by the corporation; the jury are instructed that in considering whether this allegation has been sustained, they must take into consideration not only the earnings of the corporation from the so-called Small Loan Business, but also all other earnings as shown by the evidence."

It needs no argument, that the jury having been instructed that they may consider all other earnings, the defendants could have suffered no harm or injury by the question.

Assignment 50.

Apparently this assignment is argued on page 45 of the brief of plaintiffs-in-error.

It brings for error the rejection of the following question, asked the defendant Evans on direct examination.

P. 512, l. 10:

> "Did your company pay that dividend out of earnings or not?"

This matter has been argued previously under heading II.

The State proved by Mr. Cohn, that on December 30, 1928, the Company did not have sufficient funds from earnings to pay a quarterly dividend of 2½% on a 10% per annum basis (p. 191, ll. 24-30). The State did not go beyond that. The question asked, the rejection of which is alleged as error, did not refer to a dividend payable on January 1, 1929, but to a dividend on a 12% basis, effective as of January 1, 1929. That is, the computation of the dividend on a 12% basis to begin from January 1, 1929. Such a dividend would not accrue and be payable until after March 30, 1929, and would cover a period beyond the scope of the State's proof, and it was immaterial whether or not such a dividend was from earnings.

Assignments 57 and 58.

We find no reference to these assignments in the brief of plaintiffs-in-error, except in Appendix A, wherein it is stated that they are argued under II (a), and we find no argument covering these assignments. We assume, however, that subsection 5, on page 48 of brief of plaintiffs-in-error, is meant to cover these assignments.

The questions, the admission of which is assigned for error, are as follows:

> "Q All right. Let us take that up, but before we take up the profits from the sale of securities, the situation was that up to the 30th of September this company neither did nor was it possible in the manner in which it was doing business to show a profit of 10% eliminating what profit was made on the sale of securities? Isn't that correct? (Case, p. 572, l. 33.)
>
> "Q So isn't it a fact that the only thing during the period up to December 30th that

you could depend upon to pay dividends at the rate of ten per cent. a year, was such profits as you might make on stock sales?''

''A I will answer yes'' (Case, p. 576, l. 30).

Both of these questions were proper, because the answer to them would tend to show that the dividends were paid out of surplus realized from the sale of the securities (of the Universal Finance Corporation) and not from earnings, as represented to the public. We must repeat that the issue was not the propriety of the dividends, but the representations made as to the source.

V.

Assignments 69, 70 and 71.

These were the requests to charge, numbers 7, 8, 9 and 10:

7. ''The jury are instructed that by the allegation of the indictment, that the defendants conspired to sell the stock therein mentioned, at a price which was fictitious, the State charges that the price was non-existent; and unless the jury so find beyond a reasonable doubt, the defendants must be acquitted.

8. ''The jury are instructed that by the allegation of the indictment, that the defendants conspired to sell the stock therein mentioned at a price which was above the actual and market value, the State charges that the stock was sold at a price above the actual and market value, and that in order to determine this question, there must be proof of the actual and market value, so that there may be a basis of comparison between such value and the price at which the stock was sold; unless the jury find beyond a reasonable doubt, that the stock was in fact sold at a price which was above the actual and market value, the defendants must be acquitted.

9. "There is no evidence in this case that these defendants or any of them made public sale of any preferred stock at a fictitious price.

10. "There is no evidence in this case that these defendants or any of them made any false pretenses of the actual value of the stock sold."

Of these requests, No. 8 was granted.

It is submitted that request No. 8 should have been declined, as it required the finding that the stock was in fact sold at a price above the actual and market value, in order to find defendants guilty; that is, it required the consummation of the conspiracy. This error, however, was very much to defendants' advantage, and not, therefore, cause for reversal.

Request No. 7 was properly declined, because it attempts to define the word "fictitious" to mean "non-existent."

According to Funk and Wagnalls, Standard Dictionary, fictitious means false. The price of the stock was not non-existent, in that there *was* a price, which the defendants had placed upon the stock; but it was fictitious in that it was false and untrue; the value of the stock, the actual intrinsic value being falsely represented, the price arbitrarily placed upon the stock was untrue, and above the actual value. The price was not non-existent in that a price did exist; but it was untrue and fictitious, having been based on falsely and fictitiously represented factors.

Requests Nos. 9 and 10 relate to matters purely of fact, and were properly left to the determination of the jury by request No. 3, which was granted, and by which, proof that the stock was in fact sold at a price above the actual and mar-

ket value, was made a condition precedent to a verdict of guilty.

Request No. 9 is entirely outside the scope of the indictment because it refers to evidence of consummation of the conspiracy.

The Court could not, as a matter of law, say that there was no evidence that the stock was sold at a fictitious price, or that no false pretenses were made of the actual value of the stock. There was ample evidence of both, as has been discussed above. The value of the stock was entirely dependent upon its true earning capacity and the security back of it, and there being numerous falsification concerning these, there was, therefore, falsification of the value of the stock.

Assignments 73, 74 and 75.

These assignments are based upon the refusal of the Court to charge according to requests 12, 13 and 14, which were to the effect that the evidence is that the company was bonded to the State of New Jersey, and that there is no evidence that the company was not under the supervision of the Department of Banking and Insurance.

The Court fully covered the subject in his charge (Case, p. 659, l. 32).

> "There is no question but that the company was licensed and bonded by the State of New Jersey. It had to get a license to engage in the small loan business as a condition precedent to that or a condition subsequent or immediate. It had to file a bond in the amount of $5,000."

To grant requests 13 and 14 would have been an invasion of the province of the jury as the

sole and final judges of the facts. Any comment made by the Court on the facts was justified by the evidence. The Court, very clearly and emphatically, left the determination of all questions of facts and inferences to the jury. The Court could not, as a matter of law, state to the jury that there is no evidence that the defendants made misrepresentations concerning supervision by the Department of Banking and Insurance. This question of fact being properly left to the jury, it was not error to refuse the request.

It is the accepted rule that comments on the facts, made by the Court, if justified by the evidence constitute no error.

State v. *Young,* 97 N. J. L. 501;
State v. *Scott,* 104 N. J. L. 544.

And it is not error for the Court to refuse to comment on the testimony as requested by the defendant.

State v. *Haines,* 92 N. J. L. 642.

The matter having been properly left to the jury, and all comments made by the Court being fair and supported by the evidence, no error was committed by the Court on these points.

Assignments 76 to 79, Inclusive.

These refer to refusal of the Court to charge that the various dividends declared were legal. (Requests 20, 21 and 22.)

These requests to charge, as well as the argument of counsel relative thereto, are entirely irrelevant to the issue. As has been repeatedly stated, the legality of the dividends was not in issue; the issue was the representations made by defendants to the source of the dividends.

The requests were properly declined for the further reason that it encroaches upon the province of the jury, by stating as a conclusion that

the dividends were declared out of the "surplus or net profits"; there was absolutely no evidence to justify a statement that they were declared out of the net profits. In fact, all evidence was to the contrary.

This question of propriety and legality of dividends was sufficiently covered by requests 18, 19, 23, 24 and 25, which were granted.

The Court further instructed the jury, as requested by defendants, that in considering the question whether or not the allegation concerning misrepresentation as to dividends being from earned income, had been sustained, they must take into consideration, not only earnings from the small loan business, but earnings from all sources (p. 654, ll. 3-12).

The Court's comments and a statement of his recollection as to the contentions and claims of the State, quoted at length on pages 49 and 50 of brief of plaintiffs-in-error, were justified by the evidence in the case; it in no way took away from the jury the free and unbiased consideration of the facts and constitute no error.

An instruction simply stating the State's claim is not erroneous.

> *State* v. *Venzio,* 87 Atl. 126 (N. J. Court of Errors and Appeals).
>
> The trial court is not only justified, in a criminal case, in pointing out to the jury what seems to him to be the salient features of the case, but he may give the jury the benefit of his greater experience, by telling them how the testimony strikes his mind, both as to its force, and to the inferences he would draw from it.
>
> *State* v. *Schuyler,* 75 N. J. L. 487.

These comments, if anything, put upon the State a burden of proof, larger than necessary

under the indictment. It expects of the State not merely the proof of a representation that the dividend was from earnings, but the proof of a representation that the dividends were out of the earnings from the small loans business. It is thus plain that it calls upon the State to prove more.

Defendants' argument concerning the right to declare dividends out of all earnings from all sources is without point, since, as per request No. 17, the Court so charged; and defendants do not even contend that their income from all sources was sufficient to pay the June and September, 1928, dividends.

Defendant cites the cases of *State* v. *Tapack,* 78 N. J. L. 208 and *State* v. *Clayton,* 83 N. J. L. 673, for the proposition that an erroneous instruction followed by a correct one is not cured by the latter. The cases, as well as the proposition enunciated by them, have no bearing on the case at bar. The rule of the cases applies where the charge includes a wrong "statement of law" and a correct one. In the case at bar, defendants do not even contend that the Court gave any erroneous statement of law on the point. The Court merely stated what the State's contentions were, and even gave no opinion as to their correctness; the Court at no time states that it was illegal for the defendants to have declared dividends out of anything but the income from small loans business; the Court in his charge does not even state that such a representation was made. What the Court stated was nothing more than what he thought was contended by the State, and it is elementary rule that he was entitled to do that.

Scott v. *State, supra;*
State v. *Venzio, supra.*

Assignments 81 to 86.

All these assignments refer to comments of the Court upon the testimony, and his version as to what was the claim of the State and the contentions of the defendants.

As has been argued above, the indictment charges conspiracy, and the State could contend and prove any facts tending to prove such conspiracy.

All comments made by the Court were justified by the evidence. **At no time did the Court urge** his thoughts and versions upon the jury.

It is submitted that the Court made no error in his comments and instructions.

REPLY BRIEF IN BEHALF OF DEFENDANT-IN-ERROR, AS SUBMITTED IN THE SUPREME COURT.

At the opening of the January, 1930, term, the defendants were granted leave to file a reply to the State's brief on condition that the State might in turn reply thereto, if necessary. In spite of seeming to be repetitious the State deems it necessary to answer briefly some of the statements contained in defendants' reply brief.

The argument herein contained will answer only the first and part of the second of the five points raised in defendants' brief, the other points having been sufficiently argued in the State's original brief.

The first point raised by the defendants is divided into two parts:

(a) Misconstruction of the indictment by the State; and

(b) Inaccurate summary of the evidence by the State.

(a)

The Indictment.

The argument of the defendants in this respect is summed up in this sentence (p. 10 reply brief; p. 112 of their present brief):

> "The fundamental difficulty with the argument of the State is that it is based on an erroneous premise, namely, that it is not necessary in a conspiracy case framed as in the instant indictment either to allege or to prove the criminal means by which the conspiracy is to be effectuated."

This argument is entirely consistent with the tactics of the defense throughout the trial of the case. A casual reading of the record will clearly disclose that the defense continually and persistently attempted to create a false "theory of the State" and then proceed to answer that "theory" instead of meeting the real issues in the case as raised by the indictment and the State's evidence.

This point will be made sufficiently clear, we think, if it is emphasized that the indictment charges a conspiracy entered into on March 28, 1928, to make a fraudulent sale of the preferred stock of the Universal Finance Corporation. This conspiracy was proved not by doubtful evidence or innuendo, but by the very admissions of the defendants themselves and by the documents found in their possession at the time their records were seized on December 27, 1928.

As the overt acts committed by the defendants to perpetrate this fraudulent issue upon an ignorant and unsuspecting public, the State alleged the following:

(1) The dissemination to the public of the following false representations in respect to the preferred stock, and in this respect it should be noted that all of the defendants admitted full responsibility for such dissemination:

(a) That the Universal Finance Corporation was under the supervision of the Department of Banking and Insurance of the State of New Jersey.

(b) That the Universal Finance Corporation was under bond to the State of New Jersey.

(c) That the stock was paying cumulative dividends at the rate of 6% annually participating in 50% of the net earnings.

(d) That the stock was paying dividends at the rate of 10% annually which dividends were being paid out of earnings.

(2) The payment as of July 1, 1928, to the stockholders of record of a dividend at the rate of 10% annually amounted to $1,208.75.

(3) The dissemination to the public of the false representation that the preferred stock had a real and actual value of $14 and more a share.

(4) The sale to specific persons of preferred stock which sales were induced by the aforesaid representations.

The State contended at the trial that it had proved every one of the foregoing overt acts as well as numerous other acts of palpable fraud, and upon a full presentation of the issues to a jury, the defendants were found guilty.

The defendants throughout their arguments persist in presenting the case to this court as if it were being determined upon a final hearing. That, of course, is not the case. The jury had the prerogative to accept either the State's or the defendants' interpretation of the latters' acts. An examination of the case will disclose the fact that the evidence itself was contradictory in almost no important point, and if the conclusion of the jury was justified by the evidence, this court will not disturb its verdict regardless of possibilities or probabilities.

(b)

ALLEGED INACCURATE SUMMARY OF THE EVIDENCE BY THE STATE.

The defendants in their reply brief have given six specific instances in which it is charged that the State has either misinterpreted or misstated the evidence in the case. We hesitate to engage in an acrimonious discussion on matters which may be easily determined by a reference to the State of the Case, but by reason of the length of the record and the volume of the exhibits, we feel it incumbent to answer some of the charges of the defendants seriatim.

(1)

AUDIT OF HASKINS AND SELLS.

The most important misrepresentation of which the defendants were accused was that in which they represented to the public that the preferred stock was paying an annual dividend of 10% per annum *out of earnings;* and that during the latter part of the year 1928, the earnings had increased to such an extent that the dividends would be increased to 1% per month. These representations were made during the period between July, 1928, and December, 1928, and the State professed to prove not only that the representations were untrue but that the defendants well knew they were untrue.

In this respect the State called as a witness one Julius H. Cohn (Case, pp. 172-221). He was an expert accountant engaged by the State to audit the books of the Universal Finance Corporation. These books were seized on December 27, 1928. The audit was made as of January 4, 1929. There were no entries in the books, of

course, while they were in the custody of the State. Therefore, all of Cohn's figures were substantially as of the end of the year 1928.

Cohn, the accountant, testified to certain facts from the books of the defendants' own company. Under cross examination, it was sought to be proved that he was inaccurate in his figures and unwarranted in his conclusions. The evidence shows (Case, p. 541, l. 8) that throughout the trial there was in court one Mr. Johns of the firm of Haskins and Sells, the defendants' accountant. He was not called to answer the following figures testified to by Cohn:

(Case, p. 176)

Original investment in Universal Finance Corporation.

Cash .....$ 250.00
Note 1,000.00

(Case, p. 177)

Common Stock issued—5,000 shares.
Control being in defendant Edwards and his family.

Facts in reference to income of Universal Finance Corporation for three months from April 1, 1928, to June 30, 1928.

(Case, p. 179, l. 36)

Income from all sources...$ 200.19

(Case, p. 180)

Operating Expenses..... 1,046.38
Net Loss 846.19
Dividend awarded as of
July 1, 1928 ..... 1,208.75

(Case, p. 183)

Acquisition price of Securities..$168,661.29
Market quotations of Securities 154,879.37

Depreciation 13,781.92

(Case, p. 184)

The dividend awarded as of July 1, 1928, was not paid out of earnings.

Facts in reference to income of Universal Finance Corporation for three months from July 1, 1928, to September 30, 1928.

(Case, p. 184)

Gross income from all sources..$ 5,042.32
Operating expense 6,838.82

Loss 1,794.45

(Case, p. 185)

This loss did not include the loss of $846.49 for previous quarter.

(Case, p. 186)

Dividend awarded as of October 1, 1928, $2,476.20. *Which dividend was not paid out of earnings.*

(Case, p.)

Acquisition price of securities..$171,441.42
Quotation price of securities... 153,317.62

Depreciation 18,123.80

Facts in reference to income of Universal Finance Corporation for two months from October 1, 1928, to November 30, 1928.

(Case, p. 186)

Gross income from all sources..$	8,365.11
Of which $257,137 was from small loan business.	
Operating expenses	8,184.45
Profit	178.66

(Case, p. 187)

Loss from April 1, 1928, to September 30, 1928 .....$	2,640.64
Profit to November 30, 1928....	178.66
Loss to November 30, 1928....	2,461.98

(Case, p.)

Acquisition price of securities..$109,153.28	
Quotation price of securities...	111,859.50
Appreciation	2,706.22

Facts in reference to income of Universal Finance Corporation from April 1, 1928, to January 4, 1929.

(Case, p. 191)

Gross income from all sources..$	22,614.35
Operating expense	23,136.26
Net loss	1,734.81

There were no earnings with which to pay dividends.

(Case, p. 193)

The capital value of the preferred stock of the Universal Finance Corporation as of January 4, 1929, was $10.80 approximately 65% of the prices received from the public.

(Case, p. 194)

Commissions paid to defendants, $178,575.08
Facts testified to by Mr. Cohn as relating to proportion of stock sold and volume of small loan business.

(Case, p. 195) June 30, 1928.

Subscriptions	$288,989.00 plus 25% commission
Invested in small loans	10,929.60
Cost of securities purchased	168,661.29

(Case, p. 197) September 30, 1928.

Subscriptions	$350,742.55 plus 25% commission
Invested in small loans	43,929.64
Cost of securities purchased	171,441.42

(Case, p. 198) January 4, 1929.

Subscriptions	$522,200.80 plus 25% commission
Invested in small loans	102,199.63
Cost of securities purchased	96,600.15

In spite of the above testimony the defendants offered not a single contradiction by way of evidence. They offer plenty of argument, but neither by their accountant nor by any other evidence did they controvert a single one of the above items, and in this respect the State still persists in its argument that if there were nothing else in the case, this failure of the defendants is sufficient to sustain their conviction.

Although during the trial the defendants refused to allow the State to use a blackboard (Case, p. 413) or balance sheets prepared by its accountant, and forced the State to the tedious

and sometimes difficult procedure of having all the figures testified to orally, in their defense (Case, p. 527) they offered a balance sheet prepared (but not testified to) by Haskins & Sells, as of March 30, 1929. The State objected to this and it was rejected. This ruling is fully argued in the original briefs but it seems necessary to call attention again to the fact that the statement of March 30, 1929, could not possibly be relevant. The last sale of stock was made in December, 1928. All representations were made to the then existing status and value of the stock. The status and value of the stock, in March, 1929, could have no probative value as to the status and value in the period of April, 1928, to December, 1928, during which approximately $700,000 worth of stock was sold.

(2)

DIVIDENDS AND EARNINGS.

The arguments set forth are answered under the foregoing, but in this connection the State respectfully calls to the court's attention the testimony of the defendant, Dewi T. Evans, in his cross examination (Case, pp. 536-597). He was apparently the "expert" of this trio and the proud author of Exhibit D. 23 (Case, p. 920) which was the memorandum of the financial status presented to the directors' meeting on June 14, 1928, upon which the dividend of July 1, 1928, was sought to be justified. The testimony of this witness discloses a gross ignorance of business practice, an inability to analyze a financial statement, a holding out of him by the other defendants as an "Investment Specialist" and a clear guilty knowledge of the falsity of the representations.

As to the other arguments contained in defendants' reply brief, the State will rely upon its original brief.

It is respectfully submitted that the judgment of the Supreme Court, sustaining the judgment of the trial court, should be affirmed.

Respectfully submitted,

JOSEPH L. SMITH,
Prosecutor of the Pleas.

JOSEPH E. CONLON,
Assistant Prosecutor of the Pleas.

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NEW JERSEY

Court of Errors and Appeals

STATE OF NEW JERSEY, Defendant-in-Error, vs. ALEXANDER G. EDWARDS, DALE D. HOLLENBAUGH and DEWI T. EVANS, Plaintiffs-in-Error.	On Error to Supreme Court.

BRIEF IN BEHALF OF PLAINTIFFS-IN-ERROR.

(1)

Statement of the Case.

By an indictment presented by the Grand Jury of Essex County on March 30, 1929, the plaintiffs-in-error (hereinafter referred to as defendants) were jointly charged, together with Walter F. Cawthorne and Charles Perry, with conspiracy to cheat and defraud divers unknown persons "by making public sale by means of false pretenses of the preferred stock of the Public Service Finance Corporation, later known as the Universal Finance Corporation, at a price which was fictitious and above the actual and market value thereof" (p. 5, lines 25-35).

All the defendants pleaded not guilty.

During the trial the defendants Cawthorne and Perry were acquitted on motion of the prosecutor.

The remaining three defendants (the plaintiffs-in-error) were found guilty and sentence was duly imposed. Writ of error was taken by said three defendants to the Supreme Court.

The case was brought before that court both on bill of exceptions and on certificate pursuant to Section 136 (Vol. II, pp. 675-720).

On November 28, 1930, the conviction was affirmed by the Supreme Court; the decision of that court reads as follows:

> "PER CURIAM
>
> The plaintiffs-in-error were convicted upon an indictment charging them with a conspiracy to cheat and defraud divers persons by making public sale, by means of false pretenses, of the preferred stock of the Universal Finance Company (a small loan company) at a price which was fictitious and far above the actual market value thereof.
>
> Our examination of the proof submitted in the court below has led us to the conclusion that the one hundred and seventy-six assignments of error and grounds for reversal submitted in this cause are each and every of them without legal merit.
>
> The judgment under review will, therefore, be affirmed" (p. VI).

On December 4, 1930, judgment was entered (p. VIII); and writ of error was taken to this court on December 26, 1930, returnable January 15, 1931.

(2)

Assignment of Errors.

Afterwards, to wit, on the 15th day of January, 1931, come Alexander G. Edwards, by Hobart & Minard, his attorneys, and Dale D. Hollenbaugh and Dewi T. Evans, by George T. Vickers, their attorneys, and say that in the record and proceedings aforesaid and also in giving judgment aforesaid there are manifest errors, in this:

1. Because the Supreme Court erred in giving judgment for the defendant-in-error instead of for the plaintiffs-in-error for one or more of the reasons assigned in the assignment of errors filed in the Supreme Court and brought up with the record.

2. Because the Supreme Court erred in giving judgment for the defendant-in-error instead of for the plaintiffs-in-error for one or more of the causes specified in the specification of causes for reversal filed in the Supreme Court and brought up with the record.

List of Assignments and Specifications.

In the Supreme Court there were eighty-seven assignments of error, and a like number of specification of causes for reversal with two additional general specifications; many of these assignments and specifications were not argued in the Supreme Court and will not be argued in this court.

There was submitted to the Supreme Court as part of the brief therein a list of the assignments and specifications, with a reference to the page of the record and a statement in each instance as to whether or not same was argued and, if argued, under what point of the brief it was presented.

Following is the list:

Assignment and Specification No.	*Point in Brief*	*Page of Exceptions*
1	Not argued	37
2	Not argued	38
3	Not argued	38
4	Not argued	39
5	Not argued	67
6	Not argued	70
7	Not argued	70
8	II (a)	84
9	II (a)	85
10	Not argued	85
11	Not argued	85
12	II (a); II (b)	91
13	Not argued	105
14	Not argued	105
15	II (a)	113
16	Not argued	156
17	Not argued	159
18	II (a)	184
19	II (a)	186
20	Not argued	209
21	V (a)	210
22	Not argued	216
23	Not argued	227
24	II (a)	276
25	IV	286–297
26	IV	286–297
27	I (c)	319
28	Not argued	324
29	Not argued	326
30	Not argued	327
31	Not argued	357
32	Not argued	364

Assignment and Specification No.	*Point in Brief*	*Page of Exceptions*
33	Not argued	377
34	Not argued	381
35	II (a)	406–412
36	II (a)	412
37	II (a)	412
38	II (a)	412–415
39	II (a)	417
40	I (c)	421
41	Not argued	425
42	Not argued	464
43	Not argued	464
44	Not argued	465
45	V (b)	475–477
46	Not argued	492
47	Not argued	494
48	II (a)	511
49	II (a)	511
50	II (a)	512
51	II (a) and III	528
52	II (a) and III	528
53	II (a) and III	529
54	II (a) and III	529
55	Not argued	530
56	II (a)	535
57	II (a)	573
58	II (a)	576
59	Not argued	578
60	Not argued	603
61	Not argued	606
62	Not argued	620
63	Not argued	620
64	Not argued	623
65	I and II	237

Assignment and Specification No.	*Point in Brief*	*Page of Exceptions*
66	I and II	630–651
67	Not argued	622 and 667 (4th Request)
68	Not argued	662 and 667 (5th Request)
69	I (d)	662 and 668 (7th Request)
70	I (d)	663 and 669 (9th Request)
71	I (d) and II (a)	663 and 669 (10th Request)
72	Not argued	663 and 669 (11th Request)
73	II (a)	663 and 669 (12th Request)
74	II (a)	663 and 669 (13th Request)
75	II (a)	663 and 669 (14th Request)
76	II (a)	664 and 671 (20th Request)
77	II (a)	664 and 671 (21st Request)
78	II (a)	664 and 671 (22nd Request)
79	II (a)	658
80	Not argued	659
81	II (a)	659
82	II (a)	659–660
83	II (a)	660
84	II (a)	660
85	II (a)	661
86	II (a)	661
87	I and II	Weight of Evidence

Hence the defendants did not submit to the Supreme Court "one hundred and seventy-six assignments of error and grounds for reversal," but, on the contrary, submitted forty-seven assignments and a like number of similar specifications. These were argued under the following points:

I.

The State failed to prove the general charge that the defendants engaged in a criminal conspiracy to sell stock at a fictitious price, above the actual and market value thereof.

(a) FAILURE TO PROVE THE FALSE PRETENSES ALLEGED IN THE INDICTMENT.

(b) FAILURE TO PROVE CORRUPT MOTIVE ON THE PART OF THE DEFENDANTS.

(c) ERROR IN RULINGS AS TO EVIDENCE.

(d) ERROR IN THE CHARGE OF THE TRIAL COURT AND IN THE REFUSAL TO CHARGE AS REQUESTED.

II.

The State failed to prove the specific charges of false pretenses as particularized in the indictment.

(a) MISREPRESENTATIONS ALLEGED IN INDICTMENT AND NOT PROVED AS TO:

(1) *Payment of July dividend.*

(2) *Supervision by Department of Banking and Insurance.*

(3) *Bond to the State of New Jersey.*

(4) *Character of the stock.*

(5) *Dividend rate.*

(6) *Value of stock.*

(7) *Joseph Armour, stockholder.*

(8) *Henry Harmeyer, stockholder.*

(b) No misrepresentation proved as to any other stockholders or subscribers.

III.

It was error on the part of the trial court to overrule the offer of the defendants to prove the financial condition of the corporation as of March 30, 1929, as prepared and certified by Haskins & Sells.

IV.

It was error on the part of the trial court to refuse to receive in evidence the files of the Court of Chancery in the suit brought by the Attorney General against Universal Finance Corporation and Financial Investment Corporation, and the files of said court in the suit between Samuel Klein, complainant, and Universal Finance Corporation, defendant.

V.

It was error on the part of the trial court to refuse to permit the defendants to show that the Universal Finance Corporation, within the period limited by the indictment, to wit, March 30, 1929, realized a profit on the sale of its investments.

VI.

The verdict is against the weight of the evidence.

(3)

Brief of the Argument.

Summary of Indictment.

The indictment charged the defendants (together with Cawthorne and Perry) with conspiracy to cheat and defraud divers unknown persons "by making public sale by means of false pretenses of the preferred stock of the Public Service Finance Corporation, later known as the Universal Finance Corporation, at a price which was fictitious and above the actual and market value thereof" (p. 5, lines 25-35). Certain overt acts were then charged as follows:

(a) On July 1, 1928, at Newark, the defendants Evans and Hollenbaugh caused to be paid in dividends to the then holders of preferred stock of Universal Finance Corporation, the sum of $1,208.75, "although said amount had not theretofore been earned by said company" (p. 6, lines 10-15).

(b) On July 1, 1928, "and on other days between that day and the day of the taking of this inquisition" (p. 6, line 25), the defendants (naming all of them) disseminated advertising literature to divers persons and caused to be delivered over the radio addresses advertising the sale of said preferred stock wherein it was falsely pretended and represented:

(1) That Universal Finance Corporation "was under the supervision of the Department of Banking and Insurance of the State of New Jersey" (p. 7, line 4).

(2) That "it was under bond to the State of New Jersey" (p. 7, line 5).

(3) That "the stock thus sought to be sold was preferred stock upon which was payable cumulative dividends at the rate of 6 per cent. annually, participating in 50 per cent. of the net earnings" (p. 7, line 12).

(4) That "said preferred stock was paying dividends at the rate of 10 per cent. annually, which dividends were being paid out of the earnings of said corporation" (p. 7, lines 15-17).

Then follow allegations that whereas in truth and fact, as the defendants (naming all of them) "well knew," the said corporation was not under the supervision of the Department of Banking and Insurance, was not under bond to the state, and the said stock "was not preferred stock upon which was payable cumulative dividends at the rate of 6 per cent. annually, participating in 50 per cent. of the net earnings and paying dividends at the rate of 10 per cent. annually out of the earnings of said corporation" (p. 7, lines 25-30).

(c) On July 1, 1928, "and on other days between that day and the day of the taking of this inquisition," the defendants (all of them) "through the agency of the advertising and broadcasting aforesaid," falsely pretended that the preferred stock of the Universal Corporation "had a real and actual value of $14 or more per share," whereas in fact, as the defendants well knew, "said stock did not have a real and actual value of $14 or more per share, and by means of such false pretenses did sell to divers persons * * * preferred stock of the Universal Finance Corporation for fourteen dol-

lars or more per share and did obtain therefor money in excess of five thousand dollars" (p. 8, lines 25-32).

(d) On July 20, 1928, the defendants falsely pretended to one Joseph Armour that said preferred stock was then and there of the value of $15 per share, whereas in fact said stock did not have a value of $15 per share and "by color and means of false pretenses," the defendants obtained from said Armour the sum of $150 (p. 9, lines 1-25).

(e) On July 1, 1928, the defendants falsely pretended to one Henry Harmeyer that the said preferred stock was of the value of $14 per share, whereas in fact said stock did not have a value of $14 per share and "by color and means" of false pretenses the defendants obtained from Harmeyer the sum of one thousand and fifty dollars (p. 9, line 25, to p. 10, line 5).

Summary of Argument.

The indictment was obviously intended to charge a violation of Section 37 of the Crimes Act (2 Comp. Stats., p. 1757).

The trial court, pursuant to the request of the defendants, charged the jury that this section, in so far as applicable to the case, reads as follows:

> "Any two or more persons, who shall combine, unite, confederate, conspire, or bind themselves by oath, covenant, agreement or other alliance, * * * to cheat and defraud any person or any property by any means which are in themselves criminal, shall, on conviction, be deemed guilty of a conspiracy, but no agreement to commit any crime other

> than arson, burglary, manslaughter, murder, rape, robbery, or sodomy shall be deemed a conspiracy unless some act in execution of such agreement be done to effect the object thereof by one or more of the parties to such agreement."
>
> (Charge of Court, p. 654, lines 10-20; Request No. 2, p. 666, lines 20-40).

The "criminal means" by which the indictment alleges the defendants conspired to "cheat and defraud divers persons," are "by making public sale by means of false pretenses" (p. 5, line 30).

The general charge in the indictment is that the defendants conspired to cheat and defraud by selling the stock "at a price which was fictitious and above the actual and market value thereof."

The indictment then proceeds to specify certain particulars wherein the representations (or pretenses) are said to be false.

In this brief we shall consider, first, the general charge in the indictment, and then each specific allegation of false pretenses therein, pointing out the failure of the State to prove the allegations, either generally or specifically, and indicating the errors in rulings as to evidence, and will then discuss the manner in which the trial court dealt with the several allegations in his charge to the jury and in his refusal to charge certain requests submitted in behalf of the defendants.

The discussion will cover the same points as presented in the brief in the Supreme Court, as above summarized (p. 7 hereof).

Chronological Statement of Facts.

Following is a summary of the various events leading to the indictment which, for convenience, we have arranged in chronological order with references to the testimony and exhibits.

1928 Mar. 28 to 1929 Mar. 30 — PERIOD COVERED BY ALLEGATIONS OF INDICTMENT.

Mar. 24 Certificate of incorporation of Public Service Finance Corporation filed and recorded with the Secretary of State (Exhibit D-19, p. 906).

Mar. 24 Defendant Evans became secretary-treasurer of the said Corporation (later known as Universal Finance Corporation) (p. 472, line 25).

Mar. 28 Agreement made between Public Service Finance Corporation and Alexander G. Edwards for the sale of certain of its preferred stock (Exhibit D-20, p. 916).

Mar. 29 Letter from Evans to Hollenbaugh advising that the matter used by the Plaza Loan Society over station WGCP was satisfactory (Exhibit S-10, p. 844).

(about) Mar. 31 Defendant Edwards began sale of stock of Public Service Finance Corporation (p. 299, lines 1-10).

Apr. 5 Bond of Public Service Finance Corporation, with National Surety Company as surety, to the State of New Jersey, filed with, and approved by, Commis-

sioner of Banking and Insurance, in the penal sum of $5,000, conditioned to "faithfully observe all laws relating to the business provided for" in Chapter 49, Laws of 1914 (Exhibit D-12, p. 889).

Apr. 5 License issued by Commissioner of Banking and Insurance to Public Service Finance Corporation to conduct business under Chapter 49, Laws of 1914, at 810 Broad Street, Newark, N. J., during the year ending March 1, 1929 (Exhibit D-14, p. 890).

Apr. 16 Broadcasting of stock of Public Service Finance Corporation began (p. 374, lines 1-10).

Apr. 21 Sale of stock of Public Service Finance Corporation under first contract for 25,000 shares between that corporation and defendant Edwards completed; and over-subscription estimated at $13,000 returned to subscribers (p. 301, lines 1-30).

May 1 Witness Harmeyer (one of two persons named in indictment) made first purchase of stock (p. 86, lines 30-35).

May 15 Universal F. C. invested approximately $150,000 in diversified securities (p. 478, lines 1-20).

May 25 Letter from Evans to station WABC advising as to Plaza Loan Society (Exhibit S-11, p. 845).

(about) June 1 Commissioner Fitzmaurice of Orange became director of Universal F. C. at request of Mr. Frank Tappan, credit manager of Mullins & Sons (p. 252, lines 1-20).

June 1 Lease executed between Market and Broad Realty Company, lessor, and Public Service Finance Corporation, lessee, for a term of seven years eleven months (expiring April 30, 1936), covering third floor of building on southwest corner of Broad and Market Streets, Newark, N. J.) (Exhibit D-29, p. 934).

June 11 Certificate of incorporation of Financial Investment Corporation filed and recorded with the Secretary of State (Exhibit D-26, p. 923).

June 14 Second series of radio talks began (p. 303, lines 10-15).

June 14 Board of directors of Universal F. C., consisting of Commissioner Fitzmaurice and Messrs. Tappan, Hollenbaugh and Evans, declared dividend of 2½ per cent.; that is, 1½ per cent. as a preferred dividend and 1 per cent. as a participating dividend; resolution based on memo presented to board by defendant Evans (p. 748, line 30, to p. 749, line 30; Exhibit D-23, p. 920).

June 20 Second series of radio talks completed (p. 303, lines 10-15; p. 305, line 12).

June 30 Cost of securities owned by Universal Finance Corporation on this date, $168,661.29 (p. 473, line 40; Exhibit D-18, pp. 904, 905).

June 30 Amount of industrial loans on this date, $10,929.60 (p. 198, line 28).

June 30 All overhead expense of Public Service Finance Corporation to this date paid by defendant Edwards or by Financial Investment Corporation out of com-

mission pursuant to agreement (p. 343, lines 30-40; p. 360, line 30; p. 618, lines 1-10).

July 2 License changed by Commissioner to read "Universal Finance Corporation" instead of "Public Service Finance Corporation," and its address changed from 810 Broad Street to 787 Broad Street (Broad and Market Streets), Newark, N. J.

July 3 Certificate of amendment to certificate of incorporation of Public Service Finance Corporation, filed and recorded with Secretary of State; name changed and capital stock increased (Exhibit D-19, p. 906).

July 5 Witness Harmeyer (one of two persons named in indictment) made second purchase of stock (p. 90, lines 15-20).

July 20 Witness Armour (one of two persons named in indictment) purchased stock (Exhibit S-12, p. 847).

July 31 Amount of industrial loans on this date, $16,153.70 (p. 530, line 25).

Aug. 31 Amount of industrial loans on this date, $24,936.24 (p. 530, line 25).

Aug. or Sept. Final decree entered by consent of Public Service Finance Corporation, in Court of Chancery, restraining use of name "Public Service" at the instance of the Public Service Corporation (p. 163, lines 20-40).

Sept. 4 Resolution adopted by board of directors to sell 10,000 additional shares of preferred stock at $15 per share (p. 276, lines 25-30).

Sept. 12 Board of directors of Universal F. C., consisting of Commissioner Fitzmaurice and Messrs. Hollenbaugh and Evans, declared dividends of 2½ per cent.; that is, 1½ per cent. as preferred dividends and 1 per cent. as participating dividend (p. 496, lines 30-40).

Sept. 27 Detailed audit as of June 30th of accounts of Universal Finance Corporation completed by Haskins & Sells (p. 541, lines 35-40).

Sept. The words "industrial banking" changed to the words "industrial loans" on the window of the office of Universal Finance Corporation in accordance with the orders of the Department of Banking and Insurance (p. 171, line 10, to p. 172, line 10).

Sept. 30 Amount of industrial loans on this date, $41,386.61 (p. 530, line 26).

Oct. 31 Amount of industrial loans on this date, $61,848.26 (p. 530, line 26).

Nov. 1 Branch office opened at New Brunswick (p. 306, line 10; p. 522, line 30).

Nov. 26 Letter of N. J. National Bank & Trust Company, addressed "To whom it may concern"; that Universal Finance Corporation is engaged in the industrial banking business, making loans to individuals up to $300 (Exhibit D-22 for Iden., p. 919).

Nov. 30 Financial report as of this date submitted to Department of Banking and Insurance by Universal Finance Corporation in accordance with the provisions of Chapter 49, Laws of 1914 (p. 171, lines 1-5).

Nov. 30 Amount of industrial loans on this date, $78,106.27 (p. 530, line 26).

Dec. 5 Board of directors of Universal F. C. declared dividend of 2½ per cent.; that is, 1½ per cent. as preferred dividend and 1 per cent. as a participating dividend (Exhibit D-24, p. 921).

Dec. 5 Board of directors of Universal F. C. adopted a resolution that the participating feature of the preferred stock be increased from 4 per cent, to 6 per cent., effective as of January 1, 1929 (Exhibit D-24, p. 922, line 3).

Dec. 11 Witness Harmeyer (one of two persons named in indictment) made third purchase of stock (p. 88, line 15).

Dec. 12 Prospectus issued offering preferred stock at a price of $16 per share (Exhibit S-3, p. 733).

Dec. 18 Subpoena issued to Financial Investment Corporation to have its president, officers, etc., appear before Richard C. Plumer, Special Assistant Attorney General of the State of New Jersey, respecting activities of the Universal Finance Corporation (Exhibit D-1, p. 871).

Dec. 20 Defendants Perry, Cawthorne and Evans attended before Mr. Plumer for examination (p. 40, lines 12-40).

Dec. 21 Final talk on radio (p. 235, line 10).

Dec 22 Commissioner Fitzmaurice advised of criticism by legislative committee and called meeting of board of directors of Universal F. C. (p. 251, line 30).

Dec. 24 Contract cancelled for further sales of stock (p. 398, lines 1-12).

Dec. 26 Date of "additional" rules relating to the business of making small loans, issued by Department of Banking and Insurance, prohibiting the use of the words "banking," "bank," etc., on advertising matter and communications (Exhibit D-17, p. 902).

Dec. 27 Bill of complaint filed in Court of Chancery by Edward L. Katzenbach, Attorney General, against the Universal Finance Corporation and the Financial Investment Corporation, alleging sale of securities by misrepresentations, etc. (p. 960).

Dec. 27 Rule to show cause issued by Court of Chancery, returnable January 2, 1929, why injunction should not issue in accordance with the prayer of the bill; granting injunction pending hearing on January 2, 1929 (p. 968).

Dec. 27 Offices of Universal F. C. and Financial Investment Corporation raided by detectives from office of Prosecutor of Pleas of Essex County and all books, papers, etc., seized (pp. 36, 37).

Dec. 27 Defendants Edwards, Cawthorne and Perry examined by prosecutor at his office (Exhibits S-7, 8, 9, pp. 793-823).

Dec. 28 Mr. Cohn began his examination of the books of the two corporations at the prosecutor's office (p. 173).

Dec. 28 Commissioner Fitzmaurice resigns from board of directors (p. 251, line 30).

Dec. 31 Amount of loan balance on this date, $101,269.63 (p. 530, line 26).

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Jan. 2 Order of Court of Chancery filed, modifying restraint to the extent that the defendants be permitted to pay debts for ordinary office running expenses and to collect any money due them (p. 1030).

Jan. 3 Bill of complaint filed in the Court of Chancery by Samuel Klein, on behalf of himself and other stockholders, praying for appointment of a receiver to conserve the assets of the defendant Universal Finance Corporation (p. 1033).

Jan. 3 Order filed by Court of Chancery discharging rule to show cause and dismissing bill of complaint filed by the Attorney General (p. 1031).

Jan. 4 Order of Court of Chancery appointing Merritt Lane custodial receiver (p. 1044).

Jan. 4 Latest date mentioned by Mr. Cohn in his examination of the books of the corporations and the preparation of his statements therefrom (pp. 190, 191).

Feb. 1 Order of Court of Chancery to show cause why business of company should not be liquidated or returned to its officers and directors and that a questionnaire be addressed to stockholders and subscribers asking them to express their wishes (p. 1049).

Feb. 19 Memo filed by Vice-Chancellor Church dismissing bill of complaint and discharging receiver; directing that books in the hands of the Prosecutor of the

Pleas of Essex County be returned and the company allowed to continue its business (p. 1064).

Feb. 19 Order filed by Court of Chancery reciting that it appears that 14 per cent. of stockholders have elected to liquidate and 86 per cent. to continue, and 35 per cent. of the subscribers have elected to liquidate and 65 per cent. to continue; that no request has been made to continue the receiver; that no revocation of the license is intended by the Commissioner of Banking and Insurance; that no objection is made by the Prosecutor of the Pleas of Essex County; therefore it is ordered that the business of the defendant be continued and its assets be turned back to its officers and directors (p. 1066).

Feb. 20 Order filed by Court of Chancery denying motion of Attorney General to reopen his bill of complaint (p. 1032).

Mar. 1 Bond of Universal Finance Corporation, with National Surety Company as surety, to the State of New Jersey, filed with, and approved by, Commissioner of Banking and Insurance, in the penal sum of $5,000, conditioned to "faithfully observe all laws relating to the business provided for" in Chapter 49, Laws of 1914 (Exhibit D-13 for Iden., p. 890).

Mar. 15 Dividend declared on December 5, 1928, paid to stockholders (p. 92, lines 10-20).

Mar. 30 Indictment presented as aforesaid (p. 10, line 15).

Mar. 30 Amount invested in securities by Universal Finance Corporation as of this date, $56,000; offer of defendants to show profits on sale of securities overruled (p. 474, line 30, to p. 477, line 35).

Mar. 30 As of this date a dividend was declared out of earnings at the rate of 12 per cent. per annum on the preferred stock in accordance with resolution of December 5, 1928.

Offer of defendants to show these facts overruled (p. 510, line 20, to p. 512, line 35).

Mar. 30 Amount of industrial loans on this date as per audit certified by Haskins & Sells, $110,230.90 (Exhibit D-31 for Iden., p. 98, line 15).

Mar. 30 Premium surplus on this date according to audit as certified by Haskins & Sells.... $20,371.25

Profit and loss surplus on this date according to audit as certified by Haskins & Sells 21,374.22

Total dividends on preferred stock for nine months.... 13,607.29

Offer of defendants to show these facts overruled (pp. 527-529; Exhibit D-31 for Iden., pp. 958, 959).

We shall now present the six points which were argued in the Supreme Court.

I.

The State failed to prove the general charge that the defendants engaged in a criminal conspiracy to sell stock at a fictitious price, above the actual and market value thereof.

(a) Failure to prove the false pretenses alleged in the indictment.

The general charge is that the defendants conspired to make public sale of stock by means of false pretenses, "at a price which was fictitious and above the actual and market value thereof."

In support of this (and the other charges of the indictment) the State offered three lines of proof: first, testimony of witnesses who had bought the stock; second, testimony by an expert accountant who examined the books of the corporation in January, 1929, six months after many of the events complained of; and, third, evidence of various documents and radio talks.

In the attempt to prove that the stock was sold to the public by means of false pretenses, the State called sixteen purchasers of the stock. But these witnesses, who had been called to testify on the theory that they had been defrauded of their money, disappointed the expectations of the State. Instead of the usual procession of credulous investors, lamenting their losses and denouncing the deceit of the defendants, the State's witnesses presented the picture of a happy family of upwards of 1,500 stockholders and subscribers who received, by way of dividends, every penny that had been promised or prophesied.

Some of the witnesses apparently misunderstood the statements of some of the stock salesmen on the

point as to whether the dividends that were to be paid were payable on the par value of the stock, or on the amount paid for the stock—which was in excess of the par value. But the pamphlets and other literature issued by the defendants and the subscription contracts signed by these various witnesses specifically set forth the par value of the stock; even if the indictment had alleged any misrepresentation as to the par value (which it did not), the defendants could not be held criminally responsible merely because three or four stockholders and subscribers out of 1,500 or more assumed that the dividend was to be figured on the amount paid for the stock rather than in accordance with the universal practice of computing the rate on the basis of par value; certainly no such responsibility can be imposed on the defendants in the utter absence of proof, either that the defendants personally represented, or authorized their salesmen to represent, that the return was to be estimated on the amount of the investment as distinguished from the par value.

Hence, in so far as the State's proof on the subject of fictitious or market value was presented by the supposedly deceived stockholders and subscribers, the proof entirely failed.

In so far as the State's proof on this subject was presented by an expert accountant, the proof again fails, as the only proof by this witness was as to the *book* value of the assets of the corporation; *and even that proof related to the value six months after the stock had been sold.*

As to the pamphlets and other literature, there is not a word therein which undertakes to represent the market value of the stock. The exhibits show that the stock was actually sold at $14 per share, then at $15 per share, and finally at $16

per share. But there is no representation (and *a fortiori* no *mis*representation) as to the *value* of the stock, and there is not even a suggestion that the selling price was incorrectly stated.

To sustain the fundamental allegation of false representation as to the "actual and market value" of the stock, it was incumbent upon the State to prove what the market value of this stock was, so that the jury might contrast that value with the price paid by the unknown public or by the individuals named in the overt acts or produced as witnesses to sustain the charge.

If the State seriously claimed that the stock was sold above the market value, it is strange that no attempt whatever was made to call witnesses for the purpose of proving the market value at the time the stock was sold. It is obvious that, if there is no proof of market value as a basis of comparison, it is impossible to claim that stock was sold *above* the market value.

As to what the market was, 1,500 stockholders and subscribers made the only market of which there is any proof in this case. Many of these stockholders bought repeatedly and at prevailing prices. That was the market and those prices fixed the market value of the stock. There is not one word of evidence to show that at any time these defendants, or anyone in their behalf, represented to the unknown public or to the unknown individuals a market price or value other than actually existed under the market thus created.

(b) No proof of corrupt motive.

The defendants submitted the following request to charge:

> "6a. In order to constitute the crime of conspiracy, it is not enough that the defend-

> ants, or some two or more of them, have made an agreement to do certain things; it must be shown that the motives of the confederates were corrupt; and unless the State has shown beyond a reasonable doubt that there was an actual criminal intention, the defendants must be acquitted" (p. 668, lines 12-20).

This is a correct statement of the law and was so recognized by the trial court, as he charged the same verbatim (p. 662, lines 25-34).

In the case of *Wood* v. *State,* 47 N. J. L. 461, the court said:

> "It may not be easy to exactly define by a general formula what elements of fact are essential to constitute such a combination a criminal conspiracy, but it may be safely said that the motives of the confederates must be corrupt or no criminality can attach to such a confederation. This remark is illustrated by the case of *People of New York* v. *Powell, et al.,* 63 N. Y. 88. The defendants were commissioners of charities of the county of Kings, and were indicted for conspiring together to omit, refuse and neglect to advertise for supplies as required by statute. Upon the trial, the judge charged that without regard to the defendants' ignorance of the existence of the statute, the agreement to violate the act, followed by conduct in furtherance of the agreement, constituted a conspiracy. This was held error, the court remarking that it was not enough that the act which was the object of the conspiracy, was prohibited.
>
> The confederation must be corrupt. The actual criminal intention belongs to the definition of conspiracy and must be shown to justify a conviction" (pp. 463, 464).

In that case it was held that an indictment against members of a board of chosen freeholders for combining to vote a sum of money out of the county funds to a third person, but which did not charge that the confederation was corrupt, or that the third person was, to the knowledge of the defendants, disentitled to the money, was bad.

To the same effect is *Madden* v. *State,* 57 N. J. L. 324, where the court said:

> "It is true, as a matter of course, that the combination to be criminal must appear on the face of the indictment to have been wilful and corrupt."

The rule is summarized as follows in 12 C. J. 552:

> "The formation of a common design by two or more persons is never of itself a criminal conspiracy. This may be, and often is, perfectly innocent. The confederation must be corrupt. If the motives of the confederates are not corrupt, no criminality can attach to the confederation."

We are not now questioning the validity of the indictment on its face, but if it is necessary to allege that the combination was wilful and corrupt, it is equally necessary to prove such allegation beyond a reasonable doubt.

On this point the trial court properly charged the jury in accordance with the requests No. 24 and 25. These read as follows:

> "24. The jury are instructed that if they find that the defendants Evans and Hollenbaugh (and the other directors of the Universal Finance Corporation) declared dividends in good faith, in the belief that they

were authorized to do so under the corporation laws of this State, then such finding negatives any corrupt intent on the part of the said defendants, in declaring such dividends.

25. If the jury find that the defendant Edwards represented to the public in good faith that the stock of Public Service Finance Corporation, later known as Universal Finance Corporation was on a ten per cent. dividend basis (that is, a payment of dividends at the rate of ten per cent. per year) then such finding negatives any corrupt intent on the part of such defendant in making such representation" (p. 571, line 35, to p. 672, line 15).

For charge of the court, see page 665, lines 1-25.

On this question of good faith, the evidence is discussed in detail hereafter with reference to certain of the specific allegations of the indictment. It is sufficient to point out here that the charge of the indictment is that the defendants conspired to sell stock at a price above its "actual and market" value, and for that purpose made false pretenses as to its earnings; but no proof whatever was offered by the State as to the "actual and market" value of the stock, and the question of earnings depended entirely upon the evidence of an expert accountant, who examined the books as of a time long after the alleged representations were made and by reference thereto plus his own view as to what might be included as earnings, decided that certain dividends were not paid out of earnings; and the defendants were not permitted to show the true financial condition of the corporation throughout the period covered by the indictment.

As against this conclusion, the defendants showed in detail precisely what was before the minds of the directors of the corporation at the time the

several dividends were declared, including the cash actually received and the amounts reasonably considered as potential profits—all of which were, in fact, thereafter received. All the directors, including Commissioner Fitzmaurice of the City of Orange, joined in the declarations of the dividends after the figures and estimates were presented for their consideration by the treasurer of the corporation.

A mere difference of opinion as to accounting methods is insufficient to prove a criminal conspiracy to defraud.

(c) Error in rulings as to evidence.

(1) As evidence of their good faith in the use of the term "industrial banking" in certain of the radio talks upon which the State relied as evidence of corrupt motive on the part of the defendants, an offer was made of a letter from the vice-president of the New Jersey National Bank & Trust Company dated November 26, 1928. This was first offered on the direct examination of the defendant Edwards, for the purpose of showing the source of his information in using such words; and an attempt was then made to prove that at the time the defendant used the phrase "industrial banking" the letter in question was before him. The objection of the State on the ground that it was immaterial and incompetent was sustained (p. 318, line 10, to p. 319, line 40). (See Assignment No. 27.)

Thereafter the same letter was offered during the course of the direct examination of one Roat. This man worked as a salesman for the Financial Investment Corporation from June until December, 1928. The attention of the witness was called to the testimony of a witness for the State as to a letter which the State's witness said had been

signed by some bank president and which the State's witness said was shown to him by his salesman. The same exhibit which had previously been overruled was then identified by Roat and was again offered and again rejected (p. 420, lines 1-40). (See Assignment No. 40).

The exhibit in question is in the form of a letter signed by Mr. Parker W. Silzer, assistant vice-president of New Jersey National Bank & Trust Company. It is dated November 26, 1928, and is printed in Volume III, page 919. It reads as follows (italics ours):

"NEW JERSEY NATIONAL BANK AND TRUST COMPANY
Newark, N. J.

November 26th, 1928.

Credit Department
To Whom It May Concern:

The Universal Finance Corporation have maintained an account with this institution since its inception. The company is engaged *in the industrial banking business*, making loans to individuals in amounts running up to $300. The *business is supervised by the Department of Banking and Insurance.*

We have granted the company liberal accommodation on a collateral basis and our relations have been most satisfactory. We believe the Officers are capable and merit our confidence.

Very truly yours,

PARKER W. SILZER,
Ass't. Vice President."

We submit that this exhibit should have been received in evidence on the question of the good

faith of the defendants and of their salesmen in representing to prospective purchasers that the business in which the company was engaged was known or described as "industrial banking," and was "supervised" by the Department of Banking and Insurance.

In any event, the exhibit should have been received in explanation of the testimony of the State's witness. It appears that one Levy, a witness for the State, said that a salesman called to see him and among other things the witness said:

> "I believe he showed me a letter signed by some bank president" (p. 107, line 22).

The salesman to whom this witness referred was Roat. He identified Exhibit D-22 (for iden.) as the letter which he showed to the State's witness.

In overruling the offer, the court remarked:

> "He does not claim he showed him any letter which contained a statement that was false in fact, if he did it might be admissible" (p. 420, line 25).

It was argued that the letter negatived the question of misrepresentation, and the court then further remarked:

> "There was no suggestion of misrepresentation in reference to any letter or its contents that I recall. It was the way he introduced himself in the beginning as I understand, by a letter" (p. 420, lines 30-40).

This overlooks the claim of the State that there was misrepresentation as to the supervision of the business by the Department of Banking and Insurance. It is specifically alleged in the indict-

ment that this was one of the false pretenses (p. 7, line 3; line 21).

We do not claim that a statement by an officer of a bank is evidence of the facts as to whether the Corporation was engaged in "industrial banking" and whether it was or was not under the supervision of the Banking Department. But we do claim that statements to that effect by such officer were admissible on the question of good faith.

Not only was it charged in the indictment that the defendants made false pretenses with respect to the supervision of the Banking Department, but in the opening for the State the prosecutor repeatedly argued to the jury that this pretense was one of the principal charges of the State. We quote from the opening to the jury:

> "They represented to the public, that the business was under the supervision of the Department of Banking and Insurance of the State of New Jersey. They knew if that statement was not a lie, it was at least misleading, because the only supervision the Department of Banking and Insurance was required to perform was in so far as it protected the borrowers on these small loans.
>
> Mr. Vickers: I dislike to interrupt the Prosecutor, but I think I ought to object to his stating the law. I think he is wrong, in this matter, and I take it your Honor will charge the jury as to what the law is.
>
> The Court: I think it may be well to set forth what the legal implications may be in a situation of this kind.
>
> Mr. Conlon: Gentlemen, you understand when I mention the facts in this case it is subject to my recollection of what the witnesses will say, and when I state what I

> think are the principles of law to you, in this case, it is subject to what the Court may say. He will state the law. But they say that this is subject to the supervision of the Department of Banking and Insurance of the State of New Jersey, and I submit that the impression given out by that was that this business had the same supervision as a bank, which was not true, and in that respect they lied to the public" (p. 25, line 41, to p. 26, line 35).

We are not now concerned whether, as a matter of law, the Universal Finance Corporation was under the supervision of the Banking Department. This subject is considered later in the brief. But under the present point we urge that the State charged that the defendants falsified to the public in making such representation; that the State repeatedly argued that the defendants "lied" in making such a representation; that the court charged the jury "there was no general supervision by the State Department, as there is of banks and similar financial institutions, although there may have been on the part of individuals mentioned in that regard outside the line of their duties" (p. 660, lines 1-10); and further charged the jury that the questions are "whether they were false in fact to the knowledge of the people representing them and made with the intent that they be acted on and acted on by the public and individuals in that connection," and further charged, "Those things are all fact questions for you to decide. They are all in the province of your determination of the facts or the inferences to be drawn from the facts" (p. 660, lines 20-25).

Hence, this question of supervision became one of the principal points in the case and the defendants were at least entitled to show that in making

representations on that subject, they were acting in good faith as distinguished from corrupt motives.

(d) Error in the charge and in the refusal to charge.

At the trial, counsel for the defendants, believing that the State had failed in its proof of fictitious value, after the denial of the motion for acquittal and for direction of verdict, presented requests to charge, reading as follows:

> "7. The jury are instructed that by the allegation of the indictment, that the defendants conspired to sell the stock therein mentioned, at a price which was fictitious, the State charges that the price was non-existent; and unless the jury so find beyond a reasonable doubt, the defendants must be acquitted.
>
> 8. The jury are instructed that by the allegation of the indictment, that the defendants conspired to sell the stock therein mentioned at a price which was above the actual and market value, the State charges that the stock was sold at a price above the actual and market value, and that in order to determine this question, there must be proof of the actual and market value, so that there may be a basis of comparison between such value and the price at which the stock was sold; unless the jury find beyond a reasonable doubt, that the stock was in fact sold at a price which was above the actual and market value, the defendants must be acquitted.
>
> 9. There is no evidence in this case that these defendants or any of them made public sale of any preferred stock at a fictitious price.

> 10. There is no evidence in this case that these defendants or any of them made any false pretenses of the actual value of the stock sold" (pp. 668-669).

It will be observed that the section of the indictment which we are now considering charges that the stock was sold at a price which was fictitious *and* above the actual and market value. If the State intended to rely upon this allegation, it is obvious that both charges should be proved. Hence, Requests Nos. 7, 9 and 10 above quoted.

The trial court refused to charge Nos. 7, 9 and 10 (p. 662, line 35). This refusal requires a reversal either because the defendants were entitled to a direction of verdict in their favor by reason of the State's failure of proof in this regard, or, that motion being denied, the defendants were at least entitled to have the requests charged on this point as submitted.

A somewhat different situation is presented by Request No. 8. *This request was charged in the language submitted* (p. 662, line 35, to p. 663, line 10).

Hence, this request is the law of the case. But there was no proof of actual and market value; hence, the finding of the jury is a finding that the defendants conspired to sell the stock *above* the actual and market value. But the foundation upon which this finding rests fails in the absence of proof of what the actual and market value was; and hence such finding has no evidence to support it.

II.

The State failed to prove the specific charges of false pretenses as particularized in the indictment.

(a) Misrepresentations alleged in indictment not proved.

The general charge in the indictment is a conspiracy to cheat and defraud by means of false pretenses (p. 5, lines 20-35). This in itself would be pleading a mere conclusion of law, and, therefore, the indictment sets up the false pretenses and alleges the falsity of each of them respectively.

We shall, accordingly, take up each of the alleged false pretenses.

(1) Payment of July dividend.

The indictment charges that on July 1, 1928, the defendants Evans and Hollenbaugh caused to be paid in dividends to the holders of preferred stock the sum of $1,208.75, "although said amount had not theretofore been earned" (p. 6, lines 5-18).

In support of this allegation, the State offered the evidence of Mr. Cohn. He testified that for three months, ending June 30, 1928, "the gross income from all sources was $200.19" (p. 179, lines 30-40); that of this amount the interest received from the small loan business was $41.53, and there was also an item of interest on bank balances, amounting to $4.35; that the operating expenses during that period were $1,046.38 (p. 180, line 15). He deduced that for the said period of three months there was a net loss of $846.19 (p. 180, line 28).

Mr. Cohn further stated that a dividend was declared at the end of June or the early part of July, amounting to the sum of $1,208.75, and that this was paid as of July 1, 1928 (p. 180, line 38).

He was then permitted to answer, over objection of the defendants, that this dividend was not paid out of "earnings" (p. 184, lines 1-28).

On that date the amount of the preferred stock issued and outstanding was 8,600 shares and subscriptions to the stock amounted to 19,844 shares (p. 194, lines 30-40).

On that date the company had outstanding small loans in the total sum of $10,929.60, and had invested in stocks the sum of $168,661.29 (cost price) (p. 195, lines 25-35).

Further, on that date, the company had received cash amounting to the sum of $155,568.28 (p. 197, lines 1-10).

On cross-examination, it appeared that in making his statement as to the earnings of the company up to June 30, 1928, he had made no allowance for the following items:

(a) Accrued interest on industrial loans (p. 200, line 25).

(b) Declared dividends on securities owned by the company (p. 200, line 28).

(c) Apportioned dividend earnings on such securities up to June 30th (p. 200, line 35).

(d) Profits on rights owned by the company (p. 200, line 40).

(e) Surplus arising from premiums on the sale of preferred stock (p. 207, line 18).

The failure to take these several items into account presents an entirely different picture from that suggested by the direct examination of the witness, as will appear from a consideration of these items.

(a) *Accrued interest on industrial loans.*

Mr. Cohn said that this, if included, would be "approximated" at 1½ per cent. of the outstanding loans, which is a half month at the rate of 3 per cent. (p. 201, lines 1-10). He said this would increase his figure for this item about 65 per cent. (p. 201, line 18). Of course, the accountant either was wrong in his figure or he did not understand the point of the question; this is apparent from the fact that 1½ per cent. on a loan balance of over $10,000 would be $150—which is more than 200 per cent. increase over the figure of $41.53, which represented the actual interest receipts up to that date (p. 180, line 1).

But an allowance of 1½ per cent. on a loan balance is not the only figure which may properly be considered by a corporation engaged in the small loan business. This appears from the testimony of Mr. Evans, who figured the accrued interest on industrial loans up to June 30th to be $300 (p. 480, line 29). This item was included in the detailed memorandum prepared by Mr. Evans for the use of the board of directors at the meeting of June 14th, when the question of dividends was considered (see Exhibit D-23, opp. p. 921 of Vol. III).

(b) *Declared dividends on securities owned by the company.*

These dividends amounted to the sum of $289.59 (see Exhibit D-23, opp. p. 921; testimony of Mr. Evans, p. 480, line 25).

(c) *Apportioned dividend earnings on other securities owned by the company.*

These earnings amounted to the sum of $900 (see Exhibit D-23, opp. p. 921; testimony of Mr. Evans, p. 480, line 28). They were no part of the small loan business.

It appears from said Exhibit D-23 that the figure of $900 was estimated on the basis of an average return of 5 per cent. on an investment in securities of $140,000. The latter figure was considerably less than the amount actually invested by the corporation in marketable securities, up to June 30, 1928, as appears by Exhibit D-18, Volume III, pages 904, 905, which gives a list of the securities owned on that date and shows the purchase price thereof to be the sum of $168,661.29. These securities had been purchased on or about May 15, 1928, and from that date up to June 30, 1928, would be a period of about six weeks or one-eighth of a year. Mr. Evans accordingly divided the estimated annual yield by eight, which gave him his estimate of apportioned earnings, amounting to the sum of about $900—as set forth near the bottom of Exhibit D-23.

As a matter of fact, his estimate was low; if one takes the total amount of the investment in marketable securities as of June 30, 1928, the income therefrom at an average rate of 5 per cent. would amount to about $8,250, which would make an apportioned earning for six weeks of about $1,030, instead of $900 (p. 1009, lines 10-20).

(d) *Profits on rights.*

Several of the companies whose securities had been purchased between May 15 and June 14, 1928, had issued rights, and the Universal Finance Cor-

poration was able to buy the new stock below the market price, which gave the rights a cash value. These were set forth in detail in the testimony of Mr. Evans as follows:

American Exchange-Irving Trust Co.....	$ 60.00
American Telephone & Telegraph.....	32.00
New York Central R. R.....	25.00
Guaranty Trust Co. of N. Y.....	450.00
Total value of rights.....	$567.00

(p. 480, line 20, to p. 481, line 4).

In this connection, attention may be called to a slight error in addition on Exhibit D-23, where the value of these rights is summarized as $587. However, the difference is so small—amounting to only $20—that it is of no importance. In any event, the estimate of the value of the rights turned out to be too low. This is apparent from the affidavit of Mr. Evans made in the Chancery proceedings in the Attorney General's suit, by reference to which it appears that the value of the rights as of June 30, 1928, was as follows:

American Exchange-Irving Trust Co.....	$ 52.50
American Tel. & Tel.....	49.48
New York Central R. R.....	15.94
Guaranty Trust Co. of N. Y.....	600.00
Total.....	$717.92

(See Vol. III, p. 1008.)

which is considerably more than the estimate which was before the board of directors at the time the dividend was declared.

Calculation of Dividend as of June 30, 1928.

This is shown in detail on Exhibit D-23, opposite page 921. This is the memorandum prepared by Mr. Evans as the treasurer and accountant of the company. The figures therein set forth were considered by the board in declaring the July dividend. This memorandum shows an income of $2,046.59, to which Mr. Evans added the cash receipts up to June 30th, amounting to $200.19, thus making a total of $2,246.78 (p. 481, line 10).

This was nearly double the amount required to pay the July dividend, charged to have been fraudulently declared, and falsely represented to defraud the public.

It may, however, be urged that this figure took no account of the operating expenses up to June 30th. *The reason for this was that the corporation had an agreement with its sales agent that all overhead expenses up to June 30th would be paid by the sales agent,* and, therefore, whatever the corporation received up to June 30th was properly considered as profits (p. 479, line 30, to p. 480, line 3; p. 560, lines 30-40).

It may be that Mr. Cohn might disagree with the directors, but the question is whether the directors were acting in good faith in declaring the dividend as of June 30th, or whether they declared it corruptly as a part of the alleged conspiracy. The memorandum shows earnings up to that date, amounting to the sum of $2,246.78, which would be increased by taking the actual value of the rights instead of as estimated, and would be further increased if we took the average return of 5 per cent. on the total of the marketable securi-

ties instead of the lower figure submitted to the directors.

But, even if we deduct from the figure of $2,246.78, the operating expenses—stated by Mr. Cohn to be $1,046.38—we still have a balance of $1,200.40. The dividend that was declared amounted to the sum of $1,208.75. It is a *reductio ad absurdum* to assert that, because of a trifling difference of $8.35, these defendants are criminal conspirators, intending to cheat and defraud the stockholders to whom this and all subsequent dividends were paid.

If any verification were needed of the good faith of the defendants in this respect, it is found in the fact that Mr. Fitzmaurice, Director of Revenue and Finance, and at one time Mayor of Orange, N. J., was a director of the corporation at the time the dividend was declared. He became a director around the first of June or the latter part of May (see his testimony, p. 252). He acted as attorney for the company in the litigation relating to its change of name (pp. 253, 255). He conferred with his fellow directors as to the surplus moneys and advised that the balance on hand should be invested under advice of the National City Company (p. 256, line 25, to p. 257, line 20); and this was done.

While he could not recall the exact date of the meeting at which the July dividend was declared (p. 251, line 35; p. 268, line 5), he did recall the fact that the figures were presented to the directors by Mr. Evans as the financial manager, and he accepted the latter's statement that the dividend was to be paid out of earnings and surplus (p. 268, line 10; p. 269, lines 10-20).

(e) *Surplus.*

Mr. Cohn stated that the books of the company showed a surplus arising from premiums on the sale of preferred stock, amounting to the sum of $4,504.75 (p. 207, lines 15-20); after the payment of the dividend of $1,208.75; this left a surplus of $3,296 (p. 208, line 12).

The New Jersey statute permits directors to declare dividends out of surplus or net profits (see Secs. 30 and 47 of the Corporation Act). It is not necessary to decide whether the directors would be justified in paying dividends out of surplus arising from the premiums on the sale of stock, as distinguished from an earned surplus, as the directors at no time declared or purported to declare or paid or attempted to pay the dividends out of premium surplus. The law of the case, as set forth in the charge, is that the directors were authorized to declare dividends either from surplus or from the net profits (p. 664, lines 12-25).

This charge was correct (*Goodnow* v. *American Writing Paper Co.*, 73 N. J. Eq. 692). We call attention to this for the purpose of emphasizing the good faith of the directors in declaring the dividend, as evidenced by the fact that they had before them at the time the dividend was declared the memorandum of Mr. Evans showing actual and estimated earnings amounting to $2,246.78, and the further fact that there was a substantial surplus to the credit of the company arising from the premium on the sale of the preferred stock, amounting, as of June 30th, to the sum of $4,504.75—which in itself was nearly four times the amount of the dividend declared at that time.

The jury manifestly disregarded the law of the case as declared by the Trial Court.

Corrupt Motive.

As set forth under Point I (b), *supra,* there must be a "corrupt motive" as well as an agreement. Where is the evidence of any such motive in the declaration on June 14th of the dividend that was payable and was, in fact, paid on July 2nd?

The evidence shows that the subject matter of the declaration of this dividend was carefully considered by the then directors of the corporation, to wit, Commissioner Fitzmaurice and the defendants Evans and Hollenbaugh. Figures were prepared by Evans as the treasurer of the company and submitted to the directors and, after consideration thereof, it was decided to declare a dividend of 1½ per cent. on the preferred stock, together with a participating dividend on said stock of 1 per cent., or a total quarterly dividend of 2½ per cent. thereon—or at the rate of 10 per cent. per annum.

The evidence further shows that, according to the calculations of Mr. Evans, the earnings as of June 30th were estimated to be nearly double the amount required to pay the dividend to the preferred stockholders. It may be that some expert accountant may not agree with this method of calculation, but the fact remains his calculation was not arbitrary or unreasonable, but was such as might very well be considered by business men; certainly the Director of Revenue and Finance of the City of Orange, when the figures were presented to him, made no objection to the method of calculation, or the declaration of the dividend.

As bearing on the question of the motive of the defendants, they attempted to show that an application was made to obtain a license in the State of Pennsylvania as a small loan company to do business in that State. This evidence was overruled (p. 534, line 10, to p. 535, line 10).

It had a bearing on whether the officers of this company were diligent for the benefit of the stockholders in seeking to enlarge the field of profitable investment for more than $150,000 of liquid capital assets, or whether they were engaged in a wild scramble to obtain money from the public by fraud and deceit as the State alleged.

Error in Rulings as to Evidence.

(1)

In the course of the direct examination of the State's witness Cohn, he was asked whether the dividends that were paid as of June 30th were paid out of "earnings" of the company. Objection was made on the ground that it was immaterial, for the reason that the Corporation Act provides what dividends may be paid by the directors (p. 184, lines 10-20).

The witness was permitted to answer, and, as expected, answered in the negative (p. 184, line 28).

His answer was obviously a conclusion of law and not a statement of fact, nor even a statement of an opinion; but, be that as it may, the ground of the objection was well taken, in view of the provision of the Corporation Act, that dividends may be paid, in the discretion of the directors, out of "surplus or net profits." To permit an expert witness to testify as to a legal conclusion, without regard to the provisions of the statute, is, obviously, error—and in this case it could not have failed to operate to the prejudice of the defendants, because one of the principal points of the State was the charge that the July dividend had not been declared out of "earnings." To express it another way, it was not for an expert witness to tell the jury whether a dividend had been paid out of earnings; but to give the facts from which the

jury under appropriate instructions might determine the truth of the charge.

The same question was submitted to Cohn as to the dividend that was paid on September 30th, and again, as expected, he answered in the negative (p. 186, lines 1-20). For the reasons above stated, the conclusion of law of the witness as to the dividend of September 30th was inadmissible to the same extent as his conclusion relating to the dividend of June 30th.

After the trial court had permitted Mr. Cohn to testify as to his conclusion on the subject of earnings, a similar question was asked by the defense on direct examination of Mr. Evans, with reference to the payment of the 12 per cent. dividend. *This question was overruled* (p. 512, lines 1-20). The action of the trial court in overruling the question addressed to Evans emphasized the prejudice in admitting like questions to Cohn, as thereby the testimony of Cohn on that point was left uncontradicted; if such evidence was admissible on the part of the State, surely it was equally admissible on the part of the defendants.

(2)

The defendants attempted to meet this prejudicial evidence by asking Commissioner Fitzmaurice whether the action of the board of directors (of which he was a member) was a proper action (p. 276, lines 1-10). This was overruled—no reason for the objection being given by the State (p. 276, lines 10-20).

If the conclusion of the expert was admissible, the conclusion of a member of the board of directors on the same subject was at least equally admissible; particularly as the jury might well consider the opinion of Mr. Fitzmaurice on financial matters of greater weight than that of Mr. Cohn.

(3)

On cross-examination of the defendant Hollenbaugh the State was permitted to ask the following question:

> "Q. Do you know whether or not up to the 30th day of June, eliminating everything from your consideration except the business of making small loans, whether or not the income from that business was sufficient to pay a dividend of $1,200?" (p. 406, lines 35-40).

Objection was made to this inquiry on the ground that it was not within the scope of the indictment. The court permitted it on the theory that the representation was to the effect that the earnings were out of the small loan business (p. 407, lines 15-20).

We submit in this connection that the court overlooked the limitations of the indictment. *There was no allegation that representations were made that the earnings of the company were out of the small loan business, or that the dividends were paid out of the earnings from such business.* On the contrary, the only allegation on this subject in the indictment is that it was represented that dividends "were being paid out of the earnings of said corporation" (p. 7, line 15).

The corporation, by its charter, was not limited to its small loan business. That was only a part of its activity.

The defendants were not called upon to meet any charge that they had conspired to defraud by falsely representing that the dividends were being paid out of the earnings of *the small loan business;* the direct contrary is the fact, as an examination of the indictment shows.

It should here be noted that the financial statement made by Haskins & Sells as of March 30, 1929 (Exhibit D-31 for Iden.), would have shown what proportion of the earnings came from the several operations, and that the earnings were by no means confined to the small loan business. The rejection of this statement was highly prejudicial to the defendants.

(4)

The court permitted a further question to the witness Hollenbaugh, as follows:

> "Q. Do you know whether the gross income was more than the expense, that is the gross income of the loan business alone?"

The same objection was made (p. 411, line 38, to p. 412, line 10).

This question was equally objectionable as the previous question submitted to the same witness.

(5)

At this point, attention may be called to a like error in the cross-examination of the witness Hollenbaugh as to the payment of dividends for the period ending September 30, 1928. The question of the propriety of the declaration of such dividend is discussed elsewhere in the brief, but we here point out that this entire line of testimony was improper.

Errors in Charge.

The defendants requested the trial court to charge the jury as follows:

> "The dividend declared on June 14, 1928, was lawfully so declared out of the surplus or net profits in accordance with the corporation laws of this State" (p. 671, lines 10-15).

This was declined (p. 664, line 28).

As we have shown above in our discussion of the declaration of the dividend declared on June 14th, the Corporation Law of this State permits dividends to be paid out of surplus or net profits.

Regardless of whether there were "net profits" sufficient to justify the directors in their discretion to declare the dividends, there is no dispute that the "surplus" which the company had on hand at that time was sufficient to pay the dividend nearly four times. The statute places no limitation on the character of the surplus out of which dividends may be paid. Hence, we submit, it was error not to charge this request. There was no dispute about the fact that there was surplus or net profits sufficient to justify the declaration.

Similar requests were submitted and declined as to the dividends declared in September, 1928, and in December, 1928. The same argument applies as to the right to declare dividends out of surplus. The question of the earnings of the company as of those dates is discussed elsewhere.

The trial court not only refused to charge the above request as to the declaration of dividends out of "surplus or net profits," but specifically charged that the claim of the State was that the earnings "resulted from the small loan business."

The court charged:

> "The State contends that some of these representations were fraudulent and that the public thereby, and certain members of it, were induced to buy the stock; that there were representations that the stock was worth more than it actually was in fact by reason of the assets of the corporation; that dividends were paid not out of the earnings of the company; that it was represented to

the public generally that dividends were paid out of earnings *and that these earnings resulted from the small loan business"* (p. 658, lines 30-40).

And again:

"The State says by its expert accountant that they at no time had any net income to warrant the payment of dividends, no basis for the representations generally that they were paying dividends out of income; and it *appears plain that there was no income sufficient from the small loan business to pay dividends.* That is my recollection. If yours is otherwise, as I say, you discard mine and be bound by your own, as you are the judges of the facts" (p. 660, lines 25-35).

And again:

"Mr. Evans, who was an officer of one of the corporations and actively in charge of financial matters, apparently in his testimony says, and it appears as well in the testimony of some of the others, that in his and their judgment there was sufficient money to pay the dividend when a dividend was paid in June, and he and they justify that from figures which he says make it sufficient. Then they deny these representations. They have figures at great length which I will not rehearse, to which you gentlemen have listened, which you can analyze and from which you can draw such deductions as you see fit *within the limitations I have indicated"* (p. 661, lines 2-19).

And again:

"The State on one side contends that those various representations over the radio and the representations as to not only the earning capacity but as to actual earning performance and the sources of it were representations fraudulent in character and were

> acted on by the public. The defendants say, 'No. We made no fraudulent representations. We felt we were earning what we said we were. We did not cheat. We did not defraud.' It is for you gentlemen to say, *within the limitations that I have indicated,* what was the fact, whether they did or did not. If you feel they did or at least that two or more of them did, they should be convicted. If your judgment is to the contrary, they should be acquitted" (p. 661, lines 20-35).

The above quotations clearly show that it was the contention of the State that the representations of the defendants were that the earnings of the corporation were from the small loan business. *But the State can "contend" only what comes within the indictment, and no such allegation is found therein.*

This point is fundamental and regardless of any other considerations we submit that it requires a reversal.

This argument seems to have been overlooked by the Supreme Court; in any event it is not mentioned in the opinion, which assumes that the Universal Finance Corporation was "a small loan company," *whereas in fact the making of small loans was but a part of its business.*

It may be urged by the State that this error in the charge was cured by a later statement by the trial court, where he read to the jury Request No. 17, to the effect that, in considering the allegation whether dividends had been earned, the jury must take into consideration "not only the earnings of the corporation from the so-called small loan business, but also all other earnings as shown by the evidence"; he then said, "I so charge" (p. 664, lines 1-12).

It will be observed that the trial court did not withdraw the previous parts of the charge above quoted, wherein he had repeatedly called attention to the claim of the State that the representations were that the earnings "resulted from the small loan business," and called attention to alleged representations that the earnings were made out of the small loan business, and finally said specifically, "It appears plain that there was no income sufficient from the small loan business to pay dividends."

This contradiction in the charge calls for the application of the well-settled rule that an erroneous instruction is not cured by a correct one unless the former is expressly withdrawn.

In *State* v. *Tapack,* 78 N. J. L. 208, the court said:

> "The rule is well settled that an erroneous instruction followed or accompanied by a correct one is not cured by the latter unless it is also expressly withdrawn, as the jury is left at liberty to adopt either, and it cannot be said which one was in fact adopted" (p. 211).

In *State* v. *Clayton,* 83 N. J. L. 673, the court said:

> "It is argued that this error was harmless because in the body of the charge the degrees of murder had been accurately defined. So they had, but how were the jury to know which was the law? Our theory of jury trials proceeds upon the fundamental assumption that the jury will take the law from the court, not that they shall be judges of its correctness or that as between two conflicting statements of the law they will unerringly single out the correct one" (pp. 675, 676).

In *State* v. *Erie R. R. Co.,* 84 N. J. L. 661, the court said:

> "If a judge makes a mistake in charging the jury, he may undoubtedly cure it by calling attention to it as a mistake and directing the jury to disregard it or to substitute for it a later statement of the law. Nothing of that sort was done in the present case, where the most that can be said is that two statements of the law were made to the jury, one of which was erroneous. Unless we conceive of our trial system as one in which the jury is clothed with the capacity to decide between two judicial statements of the law and unerringly to select the correct statement and to disregard the incorrect, the error of the charge in the present case was not cured or rendered non-injurious to the defendant who excepted to it" (p. 666).

In *State* v. *Lionetti,* 93 N. J. L. 24, the court said:

> "The error was not cured by the court later in the charge telling the jury that the defendant had the right to protect her husband if they found that the facts justified her in *believing* that he was in dire peril or in danger of serious bodily harm. The two passages in the charge are inconsistent and we cannot know by which the jury was guided. This error requires a reversal" (p. 26).

See also, *State* v. *Underdown,* decided by this Court, February 2, 1931.

In view of this legal principle, so firmly established by repeated decisions, we respectfully urge that this point at least *has* "legal merit," and that the Supreme Court erred in deciding to the contrary.

(2) Supervision by Department of Banking and Insurance.

The indictment alleges that it was falsely represented that the Universal F. C. was "under the supervision" of the Banking Department (p. 7, line 3).

In support of this allegation the State first undertook to prove what the representation was and then it attempted to prove that it was false.

So far as the first line of proof is concerned, the defendants do not controvert the fact that statements were made as to the supervision of the Banking Department (see for example testimony of Mr. Hurley, p. 104, line 10; Exhibit S-1, p. 725, line 5; Exhibit S-4, p. 742, line 30).

The real question on this point is whether the representation was false. It was set forth in Exhibit S-2 that the corporation "is authorized to do business under the 'Egan or Small Loan Act,' passed by the New Jersey State Legislature in 1914" (p. 730, line 20).

The statement as to the authority of the company to do business was entirely accurate (see Exhibit D-14, p. 890—the license issued by the Department under the statute of 1914).

Was the corporation "under the supervision" of the Department? We submit that under the law and the undisputed facts of this case there can be but one answer to this question. The statute has the following provisions relating to the duties of the Department of Banking and Insurance:

Sec. 1. Every person, corporation, etc., engaged in the business of loaning money in sums of $300 or less "shall procure a license to conduct such business from the Commissioner of Banking and Insurance."

Sec. 2. Application must be made for the license under oath in the form prescribed by the Commissioner, and the license is issued "in the discretion of the Commissioner," and must be renewed annually on March 1st.

The Commissioner may reject an application if he is satisfied that "the character and general fitness of the applicant is not such as to command the confidence of the community and to warrant the conclusion that the business will be honestly transacted in accordance with the intent and purpose of this act."

The Commissioner is given power to revoke any license for violation of the statute, or failure to comply with any rule or regulation of the Commissioner.

Sec. 3. The license must state the name of the person or corporation authorized to do business thereunder, the location of the office, the names of its directors, the name and the address of the Registered Agent, and must be kept posted in a conspicuous place in the office.

No person shall transact or solicit business under any other name or in any other office than that named in the license, and not more than one office shall be maintained under the same license, and no loans shall be made at any other place than that designated in the license, except that the Commissioner, in case of removal, may endorse a transfer to the new place of business.

Sec. 4. The Commissioner "shall * * * at least once a year, and oftener, if he deems it advisable, investigate the business and affairs of every such licensee, and for that purpose shall have free access to the vaults, books and papers thereof, and other sources of information with regard to the business of such licensee, and shall ascertain the condition

of the business and whether it has been transacted in accordance with law and such rules and regulations as may be prescribed by the Commissioner of Banking and Insurance pursuant to section nine (9) of this act."

The Commissioner and his examiner have authority to examine, under oath, any person whose testimony is required relative to the business of the licensee.

All licensees must submit a report to the Commissioner on or before December 20th "in the form of a trial balance of their books at the close of business on the thirtieth of November last preceding, and shall specify the different kinds of liabilities and the different kinds of assets, together with such other information as may be called for by said commissioner in accordance with a blank form to be furnished by him."

Section 5 limits the amount of interest to be charged and requires a statement to be furnished showing the amount of the loan, the date thereof and the amount and rate of interest, etc.

Section 9, "The enforcement of this act shall be intrusted to the Commissioner of Banking and Insurance, and he is hereby authorized and empowered to make rules and regulations necessary in his judgment for the conduct of such business and the enforcement of this act in addition hereto and not inconsistent herewith."

The recital of the above provisions of the statute lead to the conclusion that this business is literally "under the supervision" of the Department of Banking and Insurance. If there is any possible doubt under the plain terms of the statute, that doubt is met by the elaborate rules and regulations prescribed by the Commissioner of Banking and Insurance in accordance with Section 9 of the statute.

These were offered in evidence in behalf of the defendants (see Exhibits D-15, D-16 and D-17, pp. 893, 897, 902, respectively).

Exhibits D-15 and D-16 are the same with one exception, to be indicated hereafter.

The rules and regulations set forth in the first part thereof are a summary of the provisions of the statute, with the additional rule that "The Commissioner will exercise the right to censor all advertisements that relate to the business" (p. 894, line 30).

Under the general title of "Making of Loans" certain further regulations are set forth, as follows:

1. Licensee must file the name of each person authorized to make loans.
2. Each person who makes loans must be familiar with the law and the rules and regulations.
3. Each loan must have its proper consecutive number; notes of the borrower must bear the number, the date of the note, the amount of the loan, the time for which the loan is made, and the rate of interest to be paid.
4. Lender must not require more than three signatures in making a loan.
5. No lender is allowed to have any unfilled notes, or any incomplete forms or papers.
6. Borrower is entitled to have a copy of every paper.
7. Borrower must be given the entire note when paid.
8. No loan may be made to any person under twenty-one or to an intoxicated person or to a person when notice has been given by dependent that a loan shall not be made.

9. Lender must file an annual report on December 20th.

10. Each lender must keep full and complete record of all loans, with cash book and ledger.

"If the records or the blank forms used by any lender do not meet with the Commissioner's approval, they shall be changed or added to as he shall direct" (p. 896, lines 35-40).

Exhibit D-16 is of interest merely as showing certain rules which were in effect at one time, but which were thereafter struck out (see p. 901, lines 35-40). Such rulings admittedly were not in effect during the period involved in this indictment.

Exhibit D-17 contains "additional rules" which were issued on December 26, 1928—several months after these defendants began business. These rules prohibit the use on stationery records and advertising of the words "bank, banking," etc.

The above rules were identified and explained by Mr. James M. Sullivan, one of the examiners of the Department of Banking and Insurance (p. 164). He stated that the examination covered the relation of the companies with the borrowers to see if the rules and regulations have not been violated (p. 164, lines 30-35); and that one of the requirements was to observe if there were any violations of the General Corporation Act under which the company was incorporated, "such as the payment of the legal dividends, or any other thing that might come up, which is a violation of the General Corporation Act" (p. 165, lines 20-25). If any such situation came to his attention he said that he would report it (p. 168, line 40).

No proof was offered by the State of any complaint to the Commissioner of Banking and Insur-

ance or of any discovery by him or his examiners of any violations of the statute, either the Small Loan Act or the General Corporation Act.

Mr. Sullivan further stated that in September of 1928 his attention was called by some other companies to the fact that the Universal F. C. was using the words "industrial banking" in advertisements and on their windows. He called to the attention of the manager of the Newark office that the Department objected to the use of the word "banking" and then Mr. Sullivan testified, "It was immediately rectified" (p. 171, lines 10-30). This was done by changing the word "banking" to the word "loans," so that the advertisement on the window read "Industrial Loans" (p. 171, line 40, to p. 172, line 10).

We, therefore, have a situation where by statute persons or corporations engaged in the small loan business are subject to the direct supervision of the Commissioner of Banking and Insurance and are required to permit their business and affairs to be examined as often as the Commissioner deems it advisable and are required to submit an annual report in the form of a trial balance; in addition, the Commissioner was authorized to make, and in fact has made, detailed rules as to the conduct of the loan business and as to the annual report and as to the method of carrying on the business—even to the extent of censoring the advertisements of the corporation, and recently, even to the extent of prohibiting the use of certain words in the advertisements; and, in addition, according to the testimony of the State's own witness, the examiner of the Department, when making his examination, takes note of the payments of dividends or of possible violations of the General Corporation Act.

It is difficult to imagine any more thoroughgoing supervision. The only possible point that is not covered by the statute, or by the rules and practices of the Department, is an audit of the loans which the company may have made—which would obviously be impracticable in dealing with several hundred loan companies, each with thousands of small loans outstanding, varying in amount from $10 to $300. That such audit is not necessary as a practicable business proposition is shown by the admitted fact that the losses in this type of business average less than 1 per cent.

The defendants requested the trial court to withdraw from the jury the allegation of the indictment that the corporation was not under the supervision of the Department. Request No. 14 reads as follows:

> "14. There is no evidence to sustain the allegation in the indictment that Public Service Finance Corporation, later known as Universal Finance Corporation, was not under the supervision of the Department of Banking and Insurance of the State of New Jersey" (p. 669, line 37, to p. 670, line 2). (Assignment No. 75.)

The trial court declined this request "except as I have charged" (p. 663, line 20).

When we examine the charge we find it is misleading in this regard. The court said (italics ours):

> "There was no *general* supervision by the State department, *as there is of banks and similar financial institutions,* although there may have been on the part of individuals mentioned in that regard outside the line of their duties" (p. 660, lines 1-10).

The objection to the charge in this respect is covered by Assignment No. 82.

It would be hard to conceive of anything more prejudicial than this part of the charge. The jury were obliged to assume from such a statement that the defendants had falsely represented that the corporation was under the *general* supervision of the Department, the same way as "banks and similar financial institutions."

But there is no claim in the indictment and there is no proof whatever that any such representation was made by the defendants.

No witnesses testified and no circulars or other literature of the defendants represented that the business of the Universal F. C. was supervised like "banks and similar financial institutions."

The charge of the court in this respect was probably the persuading influence upon the minds of the jury in leading them to conclude that the defendants must be guilty of false pretenses because they were representing that the Universal F. C. was supervised like a banking institution. But clearly the defendants could not be found guilty on the theory that they made certain representations *which were neither alleged nor proved.*

Moreover, the statement in this part of the charge that the individuals (referring to the examiners of the Department) may have gone outside the line of their duties obviously amounted to a strong hint to the jury to pay no attention to the testimony of the State's own witness (which testimony was not disputed) as to the actual practice of the Department in including in the examination a report of any violations of the General Corporation Act, under which the company was incorporated.

We accordingly submit that it was prejudicial error to refuse to charge Request No. 14, and even more prejudicial to charge on the subject in the language of the trial court as above quoted.

(3) Bond to the State of New Jersey.

This alleged false pretense is closely allied with the alleged pretense about the supervision of the Banking Department. The indictment alleges that it was falsely pretended that the corporation was "under bond to the State of New Jersey"; and it is then asserted that the corporation "was *not* under bond to the State of New Jersey."

The statute of 1914 has the following provision as to bonds (italics ours):

> "Every such applicant shall execute and file a bond *to the State of New Jersey* in the penal sum of five thousand (5,000) dollars, with the Commissioner of Banking and Insurance, to be approved by him, for the faithful observance of all laws relating to such business. Said bond shall be executed by a surety company authorized by the laws of New Jersey to transact business within the State, and such bond shall be renewed and refiled annually not later than the first day of March in each year."

In the rules of the Department attention is called to this provision in the statute with the additional regulation that the bond must be executed by a surety company authorized by law to do business in the State of New Jersey (p. 893, line 30). The State proved by its own witness that the bond required by the statute had been given by the Universal F. C. and that it was renewed on March 1, 1929 (see testimony of Mr. Sullivan, pp. 167, 168; Exhibits D-12 and D-13, pp. 889, 890).

The bond was in the exact form required by the statute and was approved by the Commissioner of Banking and Insurance and filed in his office (p. 889).

Counsel for the defendants accordingly requested the trial court to charge as follows:

> "12. Under said statute, the applicant for such license is required to execute and file a bond to the State of New Jersey in the sum of $5,000 with the Commissioner of Banking and Insurance to be approved by him for the faithful observance of all laws relating to such business. The evidence in this case is that such bond was executed and filed as required by the statute.
>
> 13. There is no evidence to sustain the allegation in the indictment that Universal Finance Corporation was not under bond to the State of New Jersey" (p. 669, lines 25-35).

Both these requests were declined; No. 12, because the trial court considered that he had "sufficiently charged" it, and No. 13, "except as I have charged" (p. 663, lines 10-15).

But when we examine the charge we find the following statements on this subject:

> "There were representations, as I have indicated, that all the dividends were paid out of earnings, representations that the corporation was licensed and bonded by the State of New Jersey. Some of those representations were true in part. Some may or may not have been true. Some of them were false. There is no question but that the company was licensed and bonded by the State of New Jersey. It had to get a license to engage in the small loan business as a condition precedent to that or a condition subsequent or immediate. It had to file a bond in the amount of $5,000. Of course that bond was conditioned for obedience to the regulations of the department in the small loan business" (p. 659, lines 25-40).
>
> * * * * * *

"The questions which arise in connection with these representations are whether or not they were false in fact to the knowledge of the people representing them and made with the intent that they be acted on and acted on by the public and individuals in that connection. I might represent that I was bonded by the public and individuals in that connection. I might represent that I was bonded by a certain official to do a certain thing, or I might have created a situation where I raised the plain inference that I was bonded in every regard. What did the public understand? What inferences could be drawn from the representations made? Those things are all fact questions for you to decide. They are all in the province of your determination of the facts or the inferences to be drawn from the facts" (p. 660, lines 10-25).

(See Assignments Nos. 73, 74, 81, 83.)

There was no charge in the indictment that the defendants had created, a situation whereby they sought to raise "the plain inference" that it was bonded "in every regard."

The only thing that was represented on this subject was that the corporation was "under bond to the State of New Jersey." But under the charge the jury were permitted to assume that the indictment charged, or that the defendants had represented that they were bonded "in every regard." *No such allegation can be found in the indictment; and even if it had been alleged, there is not a scintilla of proof to sustain any such suggestion.*

We further invite attention to that part of the charge which states: "Some of them were false." This refers to representations which it was the duty of the State to prove, beyond a reasonable doubt, to be false. It was not mere comment by the court, but a declaration that an essential part of the State's case had been proved.

(4) CHARACTER OF THE STOCK.

The indictment described the stock as follows: "Preferred stock upon which was payable cumulative dividends at the rate of six per cent. annually, participating in fifty per cent. of the net earnings" (p. 7, lines 10-13); after thus describing the stock, the indictment proceeds to negative the description by asserting that the stock was *not* preferred stock upon which was payable cumulative dividends, etc. (p. 7, lines 25-28).

It takes but little argument to dispose of the alleged falsity of this representation. Exhibit D-19 is the certificate of incorporation of Public Service Finance Corporation, dated March 23, 1928, and the certificate of amendment changing its name to Universal F. C., dated June 22, 1928.

The original certificate specifically provides that the preferred stock shall be of the par value of $10; that it shall be entitled to receive dividends when and as declared at the rate of 6 per cent. per annum, payable quarterly; that the dividends shall be cumulative and be payable before any dividend on the common stock is paid; the certificate further provides that the board of directors, after payment of the cumulative dividends on the preferred stock, may declare dividends out of any remaining surplus or net profits, "which dividends shall be payable on and divided equally between the two classes of stock so that after the payment of all cumulative dividends at the rate of six per centum per annum on the preferred stock, the balance of dividends, if any, which may be declared, shall be divided equally between the preferred and common stocks pro rata to the number of shares of each class of stock outstanding" (p. 908, lines 25-35).

This is exactly as was represented.

A sample of the form of certificate of preferred stock was received in evidence as Exhibit D-21, which is the same as Exhibit D-4 (see p. 874).

The certificate of stock has the same provisions as the certificate of incorporation relative to the preference for dividends, and the cumulative nature of the dividends, and the right of the preferred stockholders to participate equally in further dividends after payment of the dividends on the preferred stock.

Similar provisions were set forth in all the stock subscriptions (see, for example, Exhibit S-12, p. 847, lines 15-20).

There is not the slightest suggestion that any stockholder failed to receive his stock certificate in the above form.

The defendants submitted a request to charge (No. 16) that there was no evidence to sustain this allegation in the indictment (p. 670, lines 15-20); and the trial court so charged (p. 663, line 35).

(5) Dividend rate.

The indictment alleges that it was represented that the preferred stock was "paying dividends at the rate of 10 per cent. annually "out of the earnings" and then negatives the truth of this representation (p. 7, line 15, and lines 2-30).

This allegation of the indictment is found in the paragraph thereof which states that "this representation (with certain others) was made on July 1, 1928, and on other days between that day and the day of the taking of this inquisition" (p. 6, lines 20-25).

The record shows that the indictment was presented to the court on March 30, 1929 (p. 10, line 15).

We will accordingly examine the evidence with a view to ascertain whether there is anything to justify the allegation that during that period the preferred stock was *not* paying dividends at the rate of 10 per cent. annually out of the earnings of the corporation, as alleged in the indictment.

It may first be observed that the defendants do not deny the fact that they, or their representatives, did represent that the stock was paying dividends at the rate of 10 per cent. per annum. It is likewise an admitted fact that stockholders *received* dividends at that rate in July and October, 1928; it is likewise an admitted fact that a dividend was *declared* in December, 1928, at the same rate (see Minutes of the Board of Directors at the meeting of December 5, 1928—Exhibit D-24, p. 921).

This third dividend was payable on December 31, 1928, to stockholders of record December 20, 1928 (p. 921, line 30).

On December 27th certain detectives attached to the office of the Prosecutor of the Pleas of Essex County seized all the records of the Universal Finance Corporation and of its selling agent, the Financial Investment Corporation (p. 36, line 18; p. 37, line 15).

On the same day, on a bill of complaint filed by the Attorney General of the State of New Jersey, pursuant to the Securities Act of March 19, 1927, a temporary injunction was issued against the Universal Finance Corporation and the Financial Investment Corporation, without notice to either of them, or to any of their officers, which, among other things, restrained the two companies, their agents, officers, etc., pending the hearing of the order to show cause and until the further order of the court "from contracting any new debt or

debts, from collecting and receiving any money owing to the defendant, Financial Investment Corporation, or from paying out any money or selling, assigning or transferring any of its property, estate or effects of any kind whatsoever" (p. 970, line 30, to p. 971, line 10).

This restraint was modified on January 2, 1929, to the extent that the defendants were permitted to pay debts for rent and ordinary running expenses and to collect and receive money owing to them (p. 1030).

On January 4, 1929, after hearing the affidavits filed in behalf of the defendants, Vice-Chancellor Church discharged the order to show cause and dismissed the bill (p. 1031). (Later, on February 20, 1929, a motion of the Attorney General to reopen the said order was denied—p. 1032.)

But the order of January 4th dismissing the Attorney General's suit did not enable the companies to resume operations, because in the meantime, on January 3, 1929, a stockholders' bill was filed asking for a receiver, and on the very day on which the Attorney General's bill was dismissed Mr. Lane was appointed custodial receiver of the Universal Finance Corporation (pp. 1044-1047).

This receivership continued until February 19, 1929, when the receiver was discharged and by the order of the Court of Chancery the business of Universal F. C. and its assets and property were returned to its officers and directors (pp. 1066-1070).

At the trial the defendants attempted to prove that the dividend declared in December was paid to stockholders. Questions addressed to various witnesses on this point were overruled and are the subject of the following assignments and specifications:

No. 8, page 84.
" 9, " 85.
" 12, " 91.
" 15, " 113.

As the payment of the December dividend, although restrained by the orders of the Court of Chancery as above set forth, was in fact made shortly after the restraint was lifted and during the period expressly covered by the indictment, we submit that the action of the trial court in overruling questions intended to prove such fact was prejudicial error. We call attention to this error as a part of the discussion of the charge in the indictment that it was falsely represented that the corporation was paying dividends at the rate of 10 per cent. per annum. That representation was literally correct and the fact that the Court of Chancery restrained the payment of the dividend declared in December certainly did not make it false or justify the charge in the indictment that the Universal F. C. was *not* paying dividends at the rtae of 10 per cent. annually.

But this is not all of the story on the subject of dividend payments; still another dividend was declared in the month of March, 1929, and paid to stockholders on April 10th (p. 959, line 12). This dividend was at the rate of *12* per cent. per annum.

The attempt of the defendants to prove the fact of the increase in the dividends from 10 to 12 per cent., including a complete statement of the financial condition of the corporation as of March 30, 1929, was overruled (pp. 527, 529), as was also the attempt to prove, on cross-examination of certain of the State's witnesses, that the dividend declared in March was in fact received by the

stockholders. See assignments and specifications above tabulated; also the following assignments and specifications:

No. 39, page 417.
" 48, " 511.
" 49, " 511.
" 51, " 528.
" 52, " 528.
" 53, " 529.
" 54, " 529.

The error of the trial court in refusing to receive in evidence the balance sheet as of March 30, 1929, is discussed below.

Although the efforts of the defendants to show the dividend history of the corporation *during the entire period covered by the indictment were overruled,* the record nevertheless does show the fact, without dispute, that dividends were declared and paid in July and October, 1928, and that a further dividend was declared in December, 1928; the reason for its non-payment until March, 1929, is as set forth above.

The fact of payment of the dividend being undisputed, the only further question under this allegation of the indictment is whether the representation that the payment was "out of the earnings" was knowingly false, and made with intent to defraud.

So far as relates to the July dividend (declared June 14, 1928), we have heretofore discussed this in connection with the allegation in another part of the indictment which relates specifically to the payment of that dividend (p. 6, line 18); this leaves for discussion the declaration and payment of the September dividend and the declaration of the dividend in December, 1928, payable on the last day of that month.

As in the case of the July dividend, so in the case of the two succeeding dividends the State relied for its proof solely upon the evidence of Mr. Cohn, who began an examination of the books of the corporation shortly after they were seized by the prosecutor on December 27th and made a report under date of January 4, 1929.

September Dividend.

Mr. Cohn testified that according to his examination of the books for the period from July 1st to September 30th, 1928, "the gross income from all sources which included this business and dividends on securities only was $5,042.32" (p. 184, lines 30-35). He said that the operating expense during that period amounted to $6,836.82 (p. 184, line 40); thus making an operating loss of $1,794.45 (p. 185, line 5).

He further said that his figure of $1,794.45 did not include the operating loss for the previous three months of $846, so that the total loss up to September 30th was $2,640.64 (p. 185, lines 30-40).

(Note: After stating that the gross income was, as above set forth, the sum of $5,042.32 for the three months' period, the witness stated that of that amount the sum of $7,211.20 [p. 184, line 38] was received from interest on notes in the small loan business—this figure must be an error, as it exceeds the total of what the witness described as the income from all sources.)

The witness then stated that the dividend which was payable as of September 30, 1928, amounted to $2,476.20, and he was then permitted to answer over the objection of the defendants that this dividend "was not paid out of the earnings" (p. 186, lines 1-20).

As in the case of the July dividend, so in the case of the September dividend the cross-examination of Mr. Cohn and the testimony presented in behalf of the defendants presented an entirely different picture from that shown by the direct examination.

As in the case of the July dividend, so in the case of the September dividend, the witness admitted that in his figures of the earnings up to September 30, 1928, he made no allowance for any of the following items:

(a) Accrued interest on loans (p. 210, line 38).

(b) Interest on bonds and accrued dividends declared but not paid as of September 30th (p. 210, line 40, to p. 211, line 3).

(c) Profit on sale of investments (p. 211, line 15).

(d) Paid-in surplus.

The testimony of Mr. Evans agrees substantially with that of Mr. Cohn as to the total of the cash income of the company during the months of July, August and September. Mr. Cohn gave this figure as $5,042.32 (p. 184, line 35). Mr. Evans testified that in fact it was $5,041.12 (p. 503, line 18).

But as above stated, Mr. Cohn, in reaching his conclusion that the September dividend was not paid out of earnings, entirely disregarded certain earnings which Mr. Evans included.

The item of accrued interest on outstanding loans as of September 30th, estimated on the basis of 1½ per cent. of the average monthly balance, amounted to $615 (p. 503, line 20, to p. 504, line 10).

The item of accrued dividends was estimated by Mr. Evans at the sum of $1,200—based on an average yield of 5 per cent. on the cost of the securities, amounting to $109,253.28 (p. 504, lines 15-20).

The paid-in surplus as of September 30th was estimated by the directors at the sum of $4,025; thus making total available assets for dividend purposes the sum of approximately $10,800 (p. 504, line 30).

The profit on the sale of securities during the month of September, according to Mr. Cohn, was the sum of $2,857 (p. 211, line 15). It is not clear whether he included this figure in what he had previously called gross income from all sources amounting to the sum of $5,042.32. But if we assume that it was included and, therefore, should not be added to Mr. Cohn's figures, then we have the following situation as of September 30th:

Gross income according to Mr. Evans and not disputed by Mr. Cohn.....	$ 5,041.12
Accrued interest on loan balance as estimated by Mr. Evans and disregarded by Mr. Cohn.....	615.00
Accrued dividends on securities as estimated by Mr. Evans and disregarded by Mr. Cohn.....	1,200.00
Paid-in surplus as estimated by Mr. Evans and disregarded by Mr. Cohn.	4,025.00
Total.....	$10,881.12
Deduct operating expense as testified by Mr. Cohn (p. 184, line 40).....	6,836.82
Balance available for dividends...	$ 4,044.30

Furthermore, a portion of the operating expenses for July, August and September were properly

charged to financing the organization and could therefore be treated *as deferred charges.* Mr. Evans' estimate of the amount for such charges for the period ending September 30, 1928, was $3,500 (p. 515, lines 1-10; p. 517, lines 1-25). This reduces to that extent the amount chargeable to current expenses and increases accordingly the amount available for dividends.

December Dividend.

At a meeting of the directors on December 5, 1928, a dividend was declared at the rate of 2½ per cent. (Exhibit D-24, p. 921).

As in the case of the previous dividends, the State attempted to show by Mr. Cohn that the earnings were insufficient to justify the declaration of the dividend. He said that the net result of the operations from April 1, 1928, to January 4, 1929, was a loss of $1,734.81, "after giving effect to a provision for revaluation of the securities from the acquisition cost to the quoted market price as of January 4, 1929" (p. 191, line 20).

In answer to the question whether the company had sufficient money to pay a dividend of 2½ per cent. as of December 30th, he replied, "No" (p. 191, line 30). In preparing this statement the witness included an item for accrued interest on industrial loans which he had omitted to include in compiling his figures as of June 30th and as of September 30th (p. 214, lines 10-15).

In order to arrive at his figure for a loss, he said that he had to include an estimate for revaluation of securities—which depended upon market fluctuations and whether at the time of an actual sale a different price is realized than that inserted as of January 4th (p. 212, line 20, to p. 213, line 10).

Witness gave no testimony at all as to the figures of profit or loss or the value of securities or otherwise *as of the date of the declaration of the dividend*—which was December 5, 1928.

Mr. Evans stated that in considering the declaration of the December dividend there was taken to account the following items:

Cash income during October	$ 1,808.54
Cash income during November (p. 505, lines 10-20)	6,556.57
Cash estimated for the month of December in the form of profits from the sale of securities (p. 507, line 35)	5,100.00
Estimate of interest received on small loans during the month of December (p. 509, line 10)	2,000.00
Estimated dividends on the securities of the company (p. 509, lines 30-40) .	600.00
Estimated interest due on small loans as of December 31st (p. 510, line 10) .	1,300.00
Premium surplus (p. 510, line 18)	12,000.00
Total	$29,365.11

Mr. Evans further explained that by reason of the fact that the company was still "in process of financing" a certain proportion of the expense could properly be treated as a deferred charge and a certain other proportion as current operating expense. The reason for this was that because of the detail incident to the sales and subscription work, practically half the time of the employees was spent on stock subscription work. He accordingly stated that 15 per cent. of certain items, such as salaries, was carried as a deferred charge, and that the total of 60 per cent. of the gross operating cost, in his opinion, would be properly chargeable to current income and approximately the balance of 40 per cent. as a deferred charge.

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On this basis about $2,500 out of a total of $3,562.05 was treated as operating expense during the month of October, and $2,000, out of a total of $2,890.23, was charged as an operating expense for the month of November, and the sum of $2,000, out of a total of $4,336.46 for the month of December, was charged to current expense (p. 517, line 20, to p. 518, line 15).

Total expense for October....	$3,562.05	
Less amount charged to operating expense	2,500.00	
Amount of deferred charge....		$1,062.05
Total expense for November..	$2,890.23	
Less amount charged to operating expense	2,000.00	
Amount of deferred charge....		890.23
Total expense for December..	$4,336.46	
Less amount charged to operating expense	2,000.00	
Amount of deferred charge...		2,336.46
Total deferred charge.....		$4,288.74

The total amount of the dividends up to December 31, 1928, was approximately $7,700 (p. 602, line 35), thus making the December dividend about $4,100.

According to Mr. Cohn, there was a net *loss* amounting to the sum of $1,734.81, as the result of the operation from April 1, 1928, to January 4, 1929 (p. 191, line 20).

But he did not allow for the proportion of accrued dividends on investments, amounting to $600 (p. 509, lines 30-40).

He made no allowance for deferred charges as part of the expense of financing the company—amounting to over $4,000.

This would in itself justify the payment of the December dividend, without any allowance for accrued dividends on securities or for the surplus.

It is obvious that the answer to the question whether the December dividends were paid out of "earnings" depends on what theory of accounting is adopted and what expert applies the theory.

There can, however, be no doubt as to the good faith of the directors of the corporation at the meeting of December 5th, when the various figures, as above set forth, were presented for their consideration.

In this connection we also call attention to the improper cross-examination of the witness Evans, when he was asked both as to the dividends of September 30th and December 30th, whether the payment of dividends was dependent upon profits that might be made only from stock sales.

Objection was made to both questions on the ground that in considering the question of the declaration of dividends directors are not permitted arbitrarily to eliminate some things and consider others or *vice versa*. Directors have not only certain rights but certain duties, and one of their duties is to consider all sources of income. Both questions were admitted over the objection of the defendant (p. 572, line 30, to p. 573, line 35; p. 575, line 1, to p. 576, line 30).

Here again it may be pointed out that the indictment charged that the "earnings" of the corporation were not sufficient to justify the payment of the dividends, and that there was no claim therein that the representation related to earnings

from the small loan business, but, on the contrary, it refers expressly to the earnings of the corporation without attempting to limit or specify their sources.

(6) VALUE OF STOCK.

After alleging misrepresentations as to the various matters set forth in sub-heads (1) to (5), the indictment then proceeds by a separate paragraph to allege misrepresentation as to the value of the stock. This part of the indictment differs in some respects from the general charge that the defendants sold the stock at a price which was fictitious and above the actual and market value thereof, in that it is here alleged that the defendant falsely pretended that the stock "had a real and actual value of $14.00 or more per share" (p. 8, line 20), whereas it did not have such value, and by means of false pretenses sold the stock for $14 or more per share (p. 8, line 30).

But although this specific allegation is different from the general charge as to value, the same question is presented that has already been discussed under Point I (a). There would seem to be little, if any, difference between the expressions "actual and market value" and "real and actual value."

As we have shown under Point I, the State submitted no proof whatever as to the *market* value; the only proof on the subject of the value of the stock was presented by Mr. Cohn and his proof was limited to the liquidation value as of January 4, 1929. He figured this value at $10.80 per share of preferred stock (p. 192, line 5, to p. 193, line 10). Of course, the liquidation value of the stock of a corporation is entirely different from the "real and actual" value; it simply represents the amount of the company's surplus as applied to the number

of outstanding shares and makes no allowance for good will or going concern value or market value.

No attempt was made by the State to prove the real value. Hence the State failed in its proof of this part of the allegation.

But further, as we have also argued under Point I (a), there was no proof that the defendants made any representations as to the *value* of the stock; the representations that were made related solely to the dividends and earnings.

No representations were made as to the actual or market or real value of the stock, and none of the sixteen stockholders and subscribers called as witnesses for the State claimed that any such representations were made.

In view of the State's failure of proof in this respect the defendants submitted Request No. 10, reading as follows:

> "There is no evidence in this case that these defendants or any of them made any false pretenses of the actual value of the stock sold" (p. 669, line 10).

This request was declined (p. 663, line 12, Assignment 71). There being no proof of actual value, or of any representation on that subject, this part of the State's case failed, and the request should have been charged, and the refusal to so charge was highly prejudicial, as it related to one of the essential averments in the indictment.

(7) Misrepresentations to one Joseph Armour.

The indictment alleges that on July 20, 1928, defendants falsely pretended to one Armour that the stock of the corporation was of the value of $15 per share and by means of false pretenses obtained from him the sum of $150.

Armour was called as a witness by the State. According to his testimony the only individual with whom he had any dealings was the defendant Cawthorne—who by direction of the court was acquitted.

Armour was a disappointing witness from the standpoint of the State. He testified that about the middle of July, 1928, he heard a broadcast over the radio. "I think it was WABC" (p. 80, line 15). The broadcast was about selling shares at $15 per share; "they made statements about increasing dividends from 6 to 10 per cent." "I cannot remember very much it has kind of went off my mind since" (p. 80, line 20).

As a result of the radio he saw Mr. Cawthorne at the office and talked about buying shares. All that Cawthorne said was they offered dividends of 6 per cent. and were increasing it to 10 per cent. "That was about all, there wasn't much conversation" (p. 80, lines 20-30). Later the witness said that Cawthorne "simply" said it was $15 a share and it was perfectly secure. "It was very brief, I simply bought the stock" (p. 81, lines 20-25).

The witness made no claim of any false pretenses as to value. When asked that specific question, he said, "I cannot recall what he (Cawthorne) said at that time" (p. 81, line 20).

The defendants attempted to show that this witness had received all the dividends that were promised and was satisfied with his investment. Questions on this line were overruled (pp. 84, 85).

There is nothing in Armour's testimony to suggest any misrepresentations as to value. The acquittal of Cawthorne is conclusive that no false representations were made to this witness.

(8) MISREPRESENTATIONS TO ONE HENRY HARMEYER.

In the indictment the State also alleged false pretenses as to one Harmeyer as to the value of the stock, alleging that it was pretended the value was $14 per share on July 1, 1928, and by color and means of false pretenses the defendant obtained from him $1,050.

Mr. Harmeyer said that on the 1st of May, 1928, he heard of the stock over the radio station WABC and after talking it over with his wife he agreed to "try" it and went to the office of the company at 810 Broad Street, Newark, saw a man named Urmston and signed a subscription for $1,050 (p. 87, lines 1-20). He inquired the price of the shares and was told it was $14; the salesman said "it was perfectly safe" (p. 87, line 30).

He then bought some more shares through a salesman who called at his house and finally bought still more on December 11th.

He heard the announcement that the dividend rate was to go up on the first of the year to 12 per cent. and also heard that the price was to be raised from $15 to $16 (p. 88, lines 20-30).

It will be observed that there is nothing in his testimony on the question of value.

On cross-examination it appears that he was further advised as to the nature of the stock, namely, that it was 6 per cent. preferred cumulative, and he said he understood what that was (p. 89, line 20).

He could not recall any representations as to dividends in May of 1928 (p. 89, line 35).

The offer of the defendants to show that this witness had received all the dividends that were represented was overruled (p. 90, Assignment 12).

The witness said in answer to a question by the court as to the dividend rate, "I know it is 12 per cent. now" (p. 91, line 40).

There is nothing in the testimony of this witness which shows any misrepresentation as to value—nor, indeed, as to any other of the false pretenses alleged in the indictment.

The general charge of the indictment, as hereinbefore pointed out, is that the conspiracy was to cheat and defraud unknown persons. The two persons whose testimony is last here reviewed are the only ones specifically averred in the indictment to whom false pretenses were made by means of which money was obtained with intent to cheat and defraud. It requires no further argument that with respect to these charges the State has not only utterly failed to support them, but, on the contrary, has affirmatively established, so far as these persons are concerned, that no false representations were employed by the defendants, or any of them.

(b) The testimony of stockholders other than Armour and Harmeyer as to the alleged misrepresentations.

In the above discussion of the particulars of the false pretenses as alleged in the indictment we have not referred to the testimony of certain stockholders (other than Armour and Harmeyer) who were called as witnesses for the State.

Fourteen other stockholders were called as State witnesses. Reference will now be made to their testimony in so far as it relates to the specific false pretenses alleged in the indictment.

It may first be noted that none of the State's witnesses testified as to any representations whatever on the subject either of market value or actual value of the stock.

Taking up now these several witnesses:

Reid, Bayonne, N. J.

Bought stock November 20, 1928. Heard of it over the radio. "The big inducement" was to pay 10 per cent. interest (p. 94, lines 1-20). He was visited by the defendant Cawthorne (acquitted by direction of the court) and was told he would get 10 per cent. Thereupon the witness bought 100 shares for $1,500 (p. 95, lines 1-20).

Three weeks later he bought additional shares in exchange for a mortgage certificate, but before the stock certificate had actually been delivered to him he heard that the company had been "closed up" and he, therefore, directed his bank not to make the transfer of his mortgage certificate (pp. 95, 96).

It will be observed that the principal representation made to this witness was as to the dividend rate. He admitted that he received the promised dividend on his 100 shares (p. 96, line 25).

He further admitted that the stock certificate on his second subscription was offered and he refused it (p. 97, lines 1-20).

There is nothing in the testimony of this witness which even tends to support the allegation of the indictment. It appears that he made an investment on an assurance that he would receive dividends at a certain rate, and he in fact received every cent that was promised.

MacDonald, Brooklyn.

On December 3rd made a contract to buy eighty shares. Heard of the stock through station WAAT. He heard they were earning and paying a 10 per cent. dividend and would increase it to 12 per cent.; that the stock was selling at $15 and would increase to $16 at the first of the year. Subscribed for eighty shares, which cost $1,200, and paid $500 on account—balance to be paid monthly (p. 99, lines 10-40).

When asked the direct question if he was told what he would receive in dividends, he said, "I don't remember whether they told me or not" (p. 100, line 1).

This answer seemed to disappoint the prosecutor as he then repeatedly attempted to show the understanding of the witness as to the amount to which the dividend rate was to be applied. Of course, the "understanding" of the witness had nothing to do with the matter, and even if it had it would be immaterial because there is no allegation in the indictment that there was any false pretense that the dividend rate was to be applied to the amount of the investment as distinguished from the par value of the stock.

After repeated questions and objections on this point the witness finally replied that as near as he could remember, the amount upon which dividends were to be paid was "upon the face value of the stock" (p. 101, line 25).

Again the prosecutor was disappointed and asked for an explanation of the witness, and he finally said, "What I paid for it" (p. 101, line 35).

He admitted that he signed a contract for the subscription. This was offered in evidence as Exhibit D-5, page 877. This contract (like all the

other contracts) specifically states that the par value of the stock is $10 per share (p. 877, line 16).

There is nothing in the evidence of this witness which supports the charges of false pretenses set forth in the indictment.

Hurley, Brooklyn.

Subscribe for stock December 4, 1928. Heard about it over the radio a week or two before. It was offered for sale at $15 a share and at a certain date it was to go to $16 a share.

> "* * * what led me to fall for it more than anything else was the statement that it was under the supervision of the Department of Banking & Insurance of the State of New Jersey, and furthermore that the dividends on that stock would be at the rate of 10 per cent., and it would be advanced on January 1, 1929, to 12 per cent." (p. 104, lines 8-15).

He also said that he understood that the dividends would be at the rate of 10 per cent. on the amount that he paid for the stock.

As to the last representation, as we have pointed out above, there is no claim in the indictment that any such representation was made.

But in any event the subscription contract of the witness is identical with the other contracts where the par value is set forth on the face of the contract (see Exhibit D-6, p. 878).

As to the representations in regard to dividends, as we have shown elsewhere, those were not false as the dividend rate at the time this witness bought the stock was 10 per cent., and the rate was in

fact advanced to 12 per cent. on January 1, 1929—exactly as stated, and the witness received same (p. 106, lines 10-20).

As to the representation about the supervision of the Banking Department, this has been discussed elsewhere, and granting that such representation was made, it was strictly true.

Levy, Bronx, New York City.

Heard of the stock over the radio in November, 1928; heard they were selling shares at $15, which would be $16 at January 1st, and the dividends were 12 per cent. on the par value of $10 (p. 107, line 1).

A salesman called at his home and told him the accountants were Haskins & Sells (which was true) and showed a letter signed "by some bank president." (*Note:* This letter was afterwards identified by Mr. Roat as the letter from the New Jersey National Bank & Trust Company, which the defendant attempted to put in evidence as Exhibit D-22, page 919—the offer being overruled [pp. 319, 421].)

The witness subscribed for seventeen shares for $255 (p. 107, line 30).

Mr. Roat called again and the witness then wanted to subscribe to the extent of $1,500 and made a deposit on account. He claimed the salesman told him that if he was not satisfied he could get his money back. The witness afterwards found that this could not be done. This statement is not mentioned in the indictment and is, therefore, of no importance in considering the question whether the State has sustained the allegations of the indictment.

The witness further claimed that the salesman represented that the corporation was under the supervision of the Banking Department (p. 108, lines 30-40). The truth of this representation is discussed elsewhere.

The witness received all the shares of stock for which he subscribed and received a check for dividends (p. 109, lines 1-10).

Thomas, Newark.

Heard of the stock over the radio and that the company was licensed and bonded to the State of New Jersey and supervised by the Banking Department; that the dividend was 6 per cent. and was to be 10 per cent. (p. 109, lines 20-40).

Messrs. Cawthorne and Perry (both acquitted by direction of the court) called at his home and told him that the price was $15 a share and it was "a safely insured investment."

He did not go into details as to par value.

> "Q. Did they tell you what the par value was? A. I don't remember them telling me. Q. Did they tell you what amount the dividends would pay? A. No."

The witness signed subscription contracts (see Exhibit D-7, p. 879).

The defendants then attempted to show that the witness had received checks for dividends, but this was at first overruled, but the court finally permitted the witness to answer, and he said that he received the checks and cashed them (pp. 113, 114).

There is no pretense of any misrepresentations in the testimony of this witness unless it be the statement that the investment was "safely insured."

But there is no claim of any such representation in the indictment and at the most it is apparent that such an expression was mere sales talk.

Hahnl, New York City.

Heard of the stock over the radio; that it was paying 10 per cent. dividend, was a good investment and was "expected" to go higher. A salesman called and told him the same thing. He subscribed for fifty shares for which he paid part in cash and agreed to pay the rest monthly.

He was asked as to the amount upon which the 10 per cent. dividend was to be paid, and answered, "I could see it on the contract I signed. Ten dollars" (p. 115, line 30). The witness further stated that the stock was to go up to 12 per cent. in January or December, "I don't know when" (p. 116, lines 1-20). He admitted that he received his checks for dividends and cashed same and finally said that he was "disappointed" because he expected to get his dividend on the $15 a share (p. 117, line 5).

There is nothing in the testimony of this witness which tends to support any of the allegations of the indictment.

Gleason, Brooklyn.

Heard over the radio that "they were going to pay fifteen percent on the money invested" (p. 118, line 25).

> "Q. Do you remember what they said it paid? A. I don't exactly" (p. 118, line 30).

It was stated that it was "a banking business" —a small loan corporation for loaning money out on small loans (p. 119, lines 1-20).

He received and read the literature and a salesman by the name of Angle called at his home and talked with him for about an hour and said the money was "absolutely safe" (p. 120, line 15). He was to get 12 per cent. on the money invested (p. 120, line 25).

On cross-examination he corrected his statement about 15 per cent. and said he meant 12 per cent. and that the stock was selling at $15 a share; he understood that the business was a small loan business; that is, loaning small amounts at 3 per cent. per month (p. 122, line 30, to p. 123, line 5).

He further said that when he saw on the literature "par value" $10 per share, he understood what that meant (p. 124, lines 1-25).

He admitted that he signed subscription contracts and received and cashed checks for dividends.

When further questioned as to what he meant by banking business, he explained that he was told that the "head man" supervised all the other banks (p. 126, lines 1-15).

He also said that it was explained to him that the company was doing a small loan business, that the rate of interest received in that business was greater than in the ordinary banking business (p. 127, lines 1-35).

His testimony as to the application of the rate to the money invested instead of to the par value of the stock is of no importance as no such charge is made in the indictment.

The only point in the testimony of this witness that has any relevancy is the claim as to misrepresentations on the subject of "banking business," but his cross-examination shows that it was fully explained to him that the company was engaged in the small loan business.

Mr. Angle was called for the defense and he said that he explained to Mr. Gleason that the business was under the supervision of the Banking Department and that the dividend was on the par value (pp. 438, 439).

Even taking the testimony of this witness at its full face value, there is nothing to sustain the allegations of the indictment unless the court should conclude that the reference to the "supervision" of the Banking Department was a misrepresentation.

Goetz, Staten Island.

Heard on the radio stock was a good investment at 10 per cent. A salesman called to see him. "He said they were working the same as the Morhis Plan, starting off small, and gradually working until they got banks all over the busy sections. He was thinking about when they got enough money that they were going to build a bank at New Brunswick" (p. 129, lines 22-30).

It may be observed in this connection that the indictment does not charge any representations as to the so-called Morris Plan, and it may be further observed that the statement as to the bank at New Brunswick was true as the corporation did open a branch at New Brunswick and still operates it there.

The witness also said that a salesman showed him a picture of the corner of Broad and Market Streets, Newark—the busiest section of Newark —and pointed out "our bank" (p. 130, lines 1-10). Of course, there is no allegation of any misrepresentation in this regard, but as a matter of fact the office of the company was at the corner of Broad and Market Streets.

None of the representations mentioned in the indictment were made to this witness.

Tennant, Newark.

Bought twenty shares. Heard of the stock over the radio. What most impressed him was "it was under the supervision of the Banking and whatever it was of the State of New Jersey" (p. 137, line 15); "that the stock was paying ten percent at the time and at the first of the year would be increased to twelve, *and that would be eight percent on the par value*" (p. 137, line 20).

He happened to meet Mr. Cawthorne, and he told him the company was making money and had good prospects and the price would be increased to $16 per share on December 15th (p. 137, lines 30-40).

He paid for his stock in full.

There is nothing whatever in his testimony to show any misrepresentation unless the reference to the Department of Banking can be so considered.

Squirtierl, Brooklyn.

Heard of the stock over the radio, that it was paying 10 per cent. dividends, to be raised to 12 on January 1st.

Mr. Angle called and said it was a "small loan business"—a "very good investment." He said "the price always goes up and never comes down" (p. 140, lines 20-30).

"The dividend was to be ten percent *on the par value*" (p. 141, lines 1-10).

Here again we have an utter absence of proof of misrepresentation.

Rabinowitz, Coney Island.

Heard of the stock the early part of December over the radio station; that it was $15 a share, paying 12 per cent. "Was under the Banking Department. That's all" (p. 142, lines 15-20).

The salesman called and said it was perfectly safe and she bought forty shares for $600 (p. 142, line 35).

He told me I would get 12 per cent. on the amount I paid in (p. 143, line 5).

On cross-examination she said it was told her the 12 per cent. rate would apply beginning in the year 1929. She admitted she received checks for quarterly dividends (p. 144, lines 1-20).

Pearsall, Brooklyn.

Heard of the stock over WABC. It was paying 10 per cent. and was under the banking and insurance laws of New Jersey.

> "Q. Anything else you remember? A. Not anything I can remember" (p. 146, lines 30-35).

A salesman called and told her it was a gilt edge investment; that 99 per cent. of the companies are successful. Subscribed for twenty shares in October and ten in December. The dividend was to be 10 per cent. during that year and after January it was to be 12 per cent.

"They made me understand it was $12 on the hundred" (p. 147, lines 20-30).

Later the witness said she understood it was to be 12 per cent. on $300 (p. 147, lines 37-40).

Subscription contracts were signed. These are the usual form and set out that the par value is $10 per share (see Exhibit D-11, p. 887).

The witness said that it was told to her that the company was in the small loan business and was under the supervision of the Banking Department (p. 149, line 30).

There is not a word in her testimony which sustains the charge of misrepresentation as set forth in the indictment.

Neither is there anything to suggest that the witness did not receive exactly what she was promised.

Gellrich, Brooklyn.

Heard of the stock over the radio. Was told it was under the "State banking laws," and declaring a 6 per cent. dividend (p. 154, line 20). Salesman called at his office and he subscribed for ten shares at $14 per share (p. 154, lines 25-40).

The State then offered in evidence certain literature which was received by the witness after his subscription was made.

The witness stated that he knew what the par value of the stock was at the time he bought it (p. 156, line 40).

There is nothing in his testimony which sustains the allegations of the indictment.

Rehack, Rahway.

Heard of the stock on the radio on May 6, 1928. "I heard a lot of stuff that the stock was so very good that a fellow would get rich over night" (p. 157, line 25).

He subscribed for 250 shares and paid down $1,000.

None of the false pretenses alleged in the indictment are sustained by the testimony of this witness.

He admitted that he was told that he would get dividends after he paid for his stock in full (p. 160, line 5; p. 161, line 40).

He further admitted that it was explained to him that the company was engaged in the small loan business and made their money in that way (p. 161, lines 20-30).

The foregoing review of the testimony of these witnesses demonstrates that their evidence was insufficient to show either that the defendants misrepresented the facts, or that the witnesses bought their stock because of the alleged misrepresentations; or that the defendants conspired to cheat them; or that any of them or of the persons "unknown" were in fact cheated.

III.

It was error on the part of the trial court to overrule the offer of the defendants to prove the financial condition of the corporation as of March 30, 1929, as prepared and certified by Haskins & Sells.

The indictment was presented to the court on March 30, 1929 p. 10, line 15). It is alleged that in execution of the conspiracy and to effect the object thereof the defendant on July 1, 1928 "and on other days between that day and the day of the taking of this inquisition," made various false pretenses specifically set forth therein (p. 6, lines 20-25).

Again, it is alleged that in execution of the conspiracy and to effect the object thereof the defendants on July 1, 1928, and on other days between

that day and the day of the taking of this inquisition, made certain other false pretenses (p. 8, lines 5-10).

It so happens that the accounting firm of Haskins & Sells had completed and certified to a balance sheet as of the very date on which the indictment was returned.

This is Exhibit D-31 for Identification and is printed in full at pages 958, 959.

The certificate of the accountants is: "We hereby certify that, subject to the collectibility of the industrial loans, in our opinion, the above balance sheet correctly sets forth the financial condition of the corporation as of March 30, 1929."

While the defendant Evans was on the stand this balance sheet was offered in evidence in order to show *the actual value* of the stock alleged to have been fraudulently sold. The offer was overruled (p. 527, line 40) (see Assignment No. 51).

The defendants then offered to prove that on March 30, 1929, the corporation had surplus earnings over and above all dividends previously declared and paid (p. 528, lines 10-20). This offer was also overruled (see Assignment No. 52).

The defendants then offered to prove the figures of surplus from premiums and the profit and loss surplus, the amount of the dividends declared on the preferred stock for the period ending March 30, 1929, and the balance remaining to the profit and loss surplus after paying such dividends (p. 528, lines 20-40).

The court overruled this offer, saying:

> "That offer is overruled, and the Court now indicates that the limit to which these defendants will be permitted is the financial condition of the corporation as of the calen-

dar year 1928 and that it may in addition be permitted to show the fact of payment of the dividend declared December 5, 1928, and the date when that dividend was paid" (p. 529, lines 1-12).

(See Assignment No. 53.)

The statement of Haskins & Sells was then marked for identification as D-31 and the refusal to receive it in evidence is the subject of Assignment No. 54.

It will be observed that under the allegations of the indictment the defendants were charged with engaging in a conspiracy from a certain date to another certain date, to wit, March 30, 1929.

While it is true the proof of the State was limited to a period ending January 4, 1929 (the date of Mr. Cohn's examination of the books), it is manifestly unfair to preclude the defendants from showing the exact financial status of the corporation *during the period covered by the indictment.*

The defendants, of course, claim that this statement would tend not only to disprove the allegation of fraud in the sale of the stock, but also to prove their good faith in the declaration of dividends.

It will be noted that the figures set forth in the balance sheet, and which the defendants offered to prove, were not prepared by the defendants, but by an independent firm of accountants of world-wide reputation. The significance of the balance sheet is that after paying all the dividends, first at 10 per cent. and then at 12 per cent. (all as represented and promised), amounting to the sum of $13,607.29, *there was still a substantial balance in the profit and loss surplus—without taking into consideration a single penny of premium surplus.*

The first dividend of $1,208.75 is not included in the total of $13,607.29 (p. 528, line 38) and, hence, that figure must be added to the amount of dividends, as shown on the statement, to show the total dividends declared and paid up to March 30, 1929. This would make the total amount of the dividends the sum of $14,816.04, but the profit and loss surplus was $21,374.22—which left a balance of about $6,500 in the profit and loss surplus account.

As shown above, a necessary element of the crime of conspiracy is that the defendants are actuated by corrupt motives. We submit that this evidence was clearly admissible on that question as it tended to show that the promises and plans of the defendants during the very period charged in the indictment were fully realized and that so far from defrauding the stockholders, the defendants were making substantial profits for them.

The evidence was also important as tending to prove the *actual* value of the preferred stock. One of the fundamental charges in the indictment is that the defendants misrepresented the actual value. As we have argued under Point I, the State failed to show either the actual or the market value and confined its efforts to proof of the so-called liquidating value. The statement as of March 30th was evidential on the question of value, as obviously one of the elements of value (either actual or market) is the return on the investment. Here we have a case where the company paid dividends at the rate of 10 per cent. per annum for the first three dividends, and then paid a further dividend at the rate of 12 per cent. per annum and still had on hand a substantial balance of profit and loss surplus—not to speak of a premium surplus

of over $20,000. This is a most remarkable showing for a new company and is all the more remarkable when one considers that it was practically out of business and deprived of the opportunity to make earnings by the unjustified attacks made upon it for a period of several weeks within the time covered by the indictment, for the beginning and continuance of the conspiracy, to wit, beginning on March 28, 1928, and continuing to March 30, 1929.

IV.

It was error on the part of the trial court to refuse to receive in evidence the files of the Court of Chancery in the suit brought by the Attorney General against Universal Finance Corporation and Financial Investment Corporation, and the files of said court in the suit between Samuel Klein, complainant, and Universal Finance Corporation, defendant.

The first of these two files was in an action brought by the Attorney General under the Securities Act of 1927; the second is the action brought by an alleged stockholder and resulted in the appointment of a custodial receiver.

Both of these proceedings were begun and ended during the period covered by the charge in the indictment.

Some of the same charges made in the indictment are found in the bill of the Attorney General. Thus it is therein alleged that the corporate defendants therein mentioned were engaging in and were about to engage in the use and employment of deception, misrepresentation, fraud, false pretenses and false promises, etc., in connection with

the sale, advertisement and disposition of securities of Universal Finance Corporation (par. 7 of Complaint, p. 961).

Then follow numerous allegations of the alleged fraudulent conduct of the defendants. For example, false announcements that the business of the Universal F. C. was under the supervision of the State Department of Banking and Insurance, and that the stock of the corporation was paying annual dividends of 10 per cent. (p. 964, lines 10-35).

After affidavits had been presented on behalf of the defendants, the Court of Chancery on January 4, 1929, dismissed the bill (p. 1031).

In the *Klein* case, a custodial receiver was appointed on January 4, 1929, and he remained in full control of the business of the company until February 19, 1929—on which date, after a full hearing and the consideration of affidavits on behalf of the corporation, the Court of Chancery discharged the receiver and returned to the corporation its business and assets (pp. 1066-1070).

No doubt one of the reasons why the Court of Chancery took this action rather than to require the receiver to liquidate the company was because of the fact (as appears from the recital in the order of February 19, 1929) that 86 per cent. of the stockholders and 65 per cent. of the subscribers voted to continue the business.

The objection of the State to the offer aparently was on the theory that it did not desire to have before the jury the fact that the company had been given "a clear bill of health," which the prosecutor said it would be "almost impossible" for him to meet (p. 295, lines 1-15).

It is a strange reason to object to evidence because it is almost impossible for the State to meet it.

We submit that the files in both cases were material and competent for the purpose of showing the corporate history of the very corporation whose stock the defendants were charged with selling by means of false pretenses—certainly when such history comes within the time limit set forth in the indictment.

V.

It was error on the part of the trial court to refuse to permit the defendants to show that the Universal Finance Corporation, within the period limited by the indictment, to wit, March 30, 1929, realized a profit on the sale of its investments.

(a)

On direct examination of Mr. Cohn, he had been permitted to testify, over objection of the defendants, that he had ascertained the market value of the securities purchased by the Universal Finance Corporation and still owed by it as of June 30, 1928, and he was further asked, over objection, whether on June 30th such securities were quoted at more or less than the acquisition price (pp. 181, 182).

He said that the "acquisition cost" according to the books examined by him was $168,661.29, and that the quotation thereon, as of that date, was $154,879.37, showing a depreciation of $13,781.92 (p. 183, lines 15-23).

On cross-examination the defendants attempted to show that there was not a single stock which had not appreciated in value and been sold at a profit.

Of course, the purpose of the prosecutor on direct examination was to convey to the jury the idea that when the dividend was declared on June 30th the company had not only sustained an operating loss, but that the directors had invested the monies of the corporation in doubtful securities.

To negative this incorrect impression the defendants vainly attempted to show that the corporation realized a profit on every one of these securities when they were actually sold within the period covered by the indictment.

(b)

On direct examination of the defendant Evans a list of securities owned by the Universal Finance Corporation was identified by him and offered in evidence as Exhibit D-18 (see p. 904).

Mr. Evans testified that the securities on that list were high grade investments, that the total amount invested by the Universal Finance Corporation at any time in securities was about $180,000, and that as of March 30, 1929, the investment amounted to the sum of $56,000. He was then asked the following question:

> "Q. Can you tell this Court and jury whether on the difference between approximately $180,000 of which you spoke and the $50,000 remaining on the 30th day of March, 1929, the corporation realized a loss or a profit?" (p. 475, lines 15-20).

Objection was made on the ground that this was immaterial, and after a long argument the objection was sustained and exception allowed (p. 477, lines 30-55).

We submit that the evidence was material for the purpose (as set forth in the argument with the

trial court), that the defendants, who were charged with an intent to defraud, are entitled to show, within the scope of the indictment, the successful result of the investments made by them in behalf of the corporation in which they were directors and whose stockholders, the State alleges, they conspired to defraud.

The overruling of this inquiry in the defendants' case was peculiarly prejudicial in view of the action of the trial court in admitting, over objection, the evidence of Cohn, as to the paper loss on these investments, as of a certain date—which date was also within the scope of the indictment—and in overruling on cross-examination of Cohn the inquiry addressed to him as set forth in sub-head (a) hereof.

VI.

The verdict is against the weight of the evidence.

Under Chapter 349, Laws of 1921, page 951, if it appears from a consideration of the entire evidence that the verdict is against the weight of the evidence the appellate court shall remedy such wrong by reversing the verdict and awarding a new trial.

We have argued under Point I that the State failed to prove the general charge of a criminal conspiracy, as set forth in the indictment; without repeating this argument it is sufficient to refer to that part thereof which discusses in detail the evidence produced by the State in support of the allegations of the indictment.

Likewise we have argued under Point II that the State failed to prove the specific charges of false pretenses, as set forth in the indictment.

Here, again, the evidence has been cited in detail and need not be repeated.

We respectfully submit that from a consideration of the entire evidence it appears that the verdict was against the weight of evidence.

REPLY TO THE STATE'S BRIEF AS SUBMITTED IN THE SUPREME COURT.

In the brief filed in behalf of the state in the Supreme Court certain arguments were presented and on the assumption that like arguments will be presented to this court, we append the following reply to the state's brief:

(1)

Reply to Point I.

(a)

MISCONSTRUCTION OF THE INDICTMENT BY THE STATE.

The brief of the State as filed in the Supreme Court says:

> "The State has made but one charge against the defendants, to wit, a conspiracy to cheat and defraud the public by means of false pretenses.
>
> "The gravamen of the indictment, therefore, is that the three defendants conspired to cheat and defraud the public by making public sale of certain stock by means of false pretenses.
>
> "Under the indictment it was not necessary for the State to show that the stock was sold at a fictitious price above the actual and

> market value. It was sufficient for the State to show that the defendants conspired to sell the stock by means of false pretenses. The gist of the charge is the conspiracy to make misrepresentations to effect the sale of the stock."

The first quotation does not correctly describe the crime alleged in the indictment, nor the crime defined by the court in its charge to the jury (p. 654, lines 10-20; p. 656, lines 20-40; see p. 11 hereof).

In the second quotation the fallacy is that the brief fails to state an essential part of the charge, to wit, that the "public sale" was "at a price which was fictitious and above the actual and market value thereof" (Vol. I, p. 5, lines 30-35).

In the third quotation the State again takes the position that it was not necessary to prove an essential allegation of the indictment, to wit, the sale at a fictitious price above the actual and market value, nor to prove the false pretenses *as alleged in the indictment, or some of them.*

The State overlooks the law of the case as set forth in the charge of the court, to the effect that the defendants must be acquitted unless the jury find, beyond a reasonable doubt, that "the stock was in fact sold at a price which was above the actual and market value" (Vol. II, p. 662, line 15, to p. 663, line 10).

In this argument the State disregards the allegations of the indictment, setting forth sales to certain individuals by the criminal means of false pretenses.

Assuming no other acts had been proved, these acts became a necessary and indispensable part of the State's proof. And, in fact, the State made a most strenuous effort, though un-

availing, to prove them. All that the State proved was the fact of the sales to these individuals, and their own testimony affirmatively disproved the allegations of false pretenses. In order to correct this misapprehension, we quote Section 37, setting up the separate and distinct offenses therein specified (italics ours):

> "Any two or more persons who shall combine, unite, confederate, conspire or bind themselves by oath, covenant, agreement or other alliance,
>
> (1) To commit any crime,
>
> (2) Or falsely and maliciously to indict another for any crime,
>
> (3) Or to procure another to be charged or arrested for any crime,
>
> (4) Or falsely to move and maintain any suit,
>
> (5) *Or to cheat and defraud any person of any property by any means which are in themselves criminal,*
>
> (6) Or to cheat and defraud any person of any property by any means which, if executed, would amount to a cheat,
>
> (7) Or to obtain money by false pretences,
>
> (8) Or to conceal or spread any contagious disease,
>
> (9) Or to commit any act for the perversion or obstruction of justice or the due administration of the laws, shall, on conviction, be deemed guilty of a conspiracy, * * *" (2 Com. St. 1910, p. 1757).

Subdivision 5 of this section is one of the agreements requiring that "some act in execution of such agreement be done to effect the object thereof."

This indictment is under subdivision 5 and the court so charged the jury (p. 654, lines 10-20).

The State's brief asserts that:

> "The so-called 'Specific Charges of false pretenses' are the overt acts required by the statute, * * *."

It is conceded that following what plaintiffs-in-error designate as the general charge, being paragraph 2 of the indictment (p. 5, lines 20-35), the remainder of the indictment alleges a number of overt acts.

If the language set out in this remainder of the indictment could be confined by the description of overt acts, the indictment would be fatally defective as having charged merely a conclusion of law as to the criminal means which are a necessary element of the offense set out under said subdivision 5.

These criminal means are *properly* set out in the indictment alleging the false pretenses and charging these defendants with knowledge of their falsity.

Reference to what the State calls the allegation of overt acts will demonstrate the soundness of this contention.

In support of the State's claim as to the modicum of proof required under this indictment, the State cites the cases of

State v. *Young,* 37 N. J. L. 184;
State v. *Madden,* 57 N. J. L. 324;
U. S. v. *Weiss,* 293 Fed. 992.

An examination of the indictments in the first two cases will show that they were not drawn under that part of Section 37 to which this indictment refers.

In the *Weiss* case the brief for the State quoted correctly a part of the opinion, but omits an important part which follows the quotation in the State's brief; this is (italics ours):

> "But the question remains, having set out the means by which the conspiracy was to be effected with unnecessary particularity, was it necessary for the government to prove the said allegation, or might the court have rightfully held the words quoted were merely surplusage, to be ignored in proof? Applying the test just mentioned, it will be seen that, if we strike out the words 'without a permit, that is to say, upon a false, forged, and fictitious permit,' we have left in the first indictment a charge of conspiracy unlawfully to purchase and transport intoxicating liquor, a charge manifestly the same as that included in the present indictment. *True it is that no allegation, whether it be necessary or unnecessary, more or less particular, which is descriptive of the identity of what is legally essential to the charge in the indictment, can be rejected as surplusage.* See Justice Story's opinion in U. S. v. Howard, 26 Fed. Cas. 388, No. 15,403. But the learned justice, who so clearly states and demonstrates the reason for the truth of this rule, also clearly differentiates such examples from those of surplusage that may be rejected. He says:
>
> 'Mere surplusage will not vitiate an indictment, and need not be established in proof. The material parts which constitute the offense charged must be stated in the indictment, and they must be proved in evidence.

> But allegations not essential to such a purpose, which might be entirely omitted *without affecting the charge against the defendant,* and without detriment to the indictment, are considered as mere surplusage, and may be disregarded in evidence.' "

The specific allegations descriptive of the criminal means employed as set out in this indictment are legally essential to its validity and cannot be disregarded as mere surplusage.

The further argument of the State is that the State did not intend to charge in the indictment that the stock was sold by means of false pretenses but merely that certain false pretenses were made, that thereafter certain individuals bought stock, and that it made no difference in the guilt of defendants whether the individuals bought the stock as a result of the false pretenses.

This argument overlooks the specific charge in the indictment with reference to certain individuals, namely, that the defendants "did falsely pretend" that the stock was of a certain value whereas it did not have such value, and the further allegation that "by color and means of false pretenses" the defendants obtained from these individuals certain sums of money (see indictment, Vol. I, pp. 9, 10, State of Case).

If the purpose of the State was *only* to charge overt acts in the sale of stock to these individuals, it may well be asked, why allege in the indictment, first, that the defendants falsely pretended; and, second, that by means of false pretenses the defendants obtained money from the named individuals. It may further be asked, if the State considered it unimportant to prove either the false pretenses or the obtaining of money thereby, why the attempt to prove by the two individuals named

in the indictment the fact that false pretenses were made to them and that they paid money to the defendants as a result of such pretenses.

The answer to these questions is that the State *did* intend to charge and did intend to prove both the false pretenses and the obtaining of money thereby; having failed to prove either the pretenses or the obtaining of money, *in so far as relates to these individuals,* the State attempted to sustain the conviction by disregarding this part of the indictment and the evidence offered to support it by saying that the State never intended to charge it and never intended to prove it.

The difficulty is that the State failed to prove these charges (see pp. 79-82 hereof).

Again, the State disregards *its own evidence* offered by some fifteen witnesses other than Armour and Harmeyer by stating that it was not "incumbent" upon the State to prove the charge of obtaining money under false pretenses. If the State considered that this evidence was of no importance, why was it produced at all? The answer is that the State *did* intend to prove and *expected* to prove the false pretenses and the obtaining of money thereby from each of these individual witnesses. Having been disappointed in such expectation the State now waves all this evidence to one side as of no importance and says in effect that, granting there was no false pretense as to these witnesses, or granting that they did not purchase stock because thereof, in any event it makes no difference in the guilt of the defendants as all this evidence was immaterial.

In view of the argument thus presented in behalf of the State, it is interesting to contrast the claim that false pretenses are immaterial with the position adopted by the State at the trial, as

indicated by its opening—which was reported at length and is in the record. For example, we call attention to the statement in the opening that:

> "They decide to lie and cheat and defraud the public, and do defraud the public, and I will prove, gentlemen, that after all of these representations by them were made, that if this company were liquidated at the time the complaint in this case was made, without allowing a cent for expenses, after liquidation they would not have fifty cents on the dollar, and at that time they were telling the public that they had a surplus, and increasing profits, and so on and so forth" (p. 33, lines 1-20).

The direct charge was made by the State that the defendants lied and cheated and defrauded the public; having failed to prove this very serious charge, the State now changes front and says it was not necessary to prove these allegations, even though they were in the indictment, and even though we told the jury we intended to prove them.

In the charge to the jury the court said (italics ours):

> "Before any of the defendants in this case can be convicted the jury must be satisfied beyond a reasonable doubt that at least two of them are guilty of a conspiracy to cheat and defraud some person of property *by means which are in themselves criminal.* Unless the jury are so satisfied, the defendants must be acquitted" (p. 654, lines 20-30).

Again the court said (referring to the literature and the radio talks):

> "The State contends that some of these representations were fraudulent and that

> the public *thereby,* and certain members of it, *were induced to buy the stock;* * * *" (p. 658, lines 30-40).

And again:

> "The questions which arise in connection with these representations are whether or not they were false in fact to the knowledge of the people representing them and made with the intent that they be acted on and acted on by the public and individuals in that connection" (p. 660, lines 10-15).

And again:

> "The State on one side contends that those various representations over the radio and the representations as to not only the earning capacity but as to actual earning performance and the sources of it were representations fraudulent in character and were acted on by the public" (p. 661, lines 20-25).

And again (Request to Charge No. 6 of Defendants):

> "In considering the question whether the State has proved beyond a reasonable doubt the allegations of the indictment, the jury are limited to the specific charges therein, namely, that the defendants conspired to cheat and defraud by making public sale by means of false pretenses of certain stock, therein mentioned, a price which was fictitious and above the actual and market value. I so charge" (p. 662, lines 15-24).

Hence, some of the important issues, as submitted to the jury by the charge of the trial judge, were whether certain representations were made, whether they were "false in fact" and "fraudulent in character" and were intended to be acted on by the public, and whether they were in fact so acted on.

But in the Supreme Court the State argued that these issues were immaterial and that all the State claimed was that the defendants conspired to cheat and defraud the public by means of false pretenses, and that one or more overt acts, to wit, the sale of stock, were committed in furtherance of the conspiracy.

If such an argument had been presented at the trial of the case it would have been the duty of the trial court to direct the acquittal of the defendants without more ado.

The fundamental difficulty with this argument of the State is that it is based on an erroneous premise, namely, that it is not necessary in a conspiracy case framed as in the instant indictment either to allege or to prove the criminal means by which the conspiracy is to be effectuated. This fallacy was pointed out to the trial court in the argument of motion for direction of verdict (see, for example, p. 631, lines 20-30).

(b)

INACCURATE SUMMARY OF THE EVIDENCE BY THE STATE.

We agree with the statement in the State's brief that "Nothing less than the entire record of the case with its numerous exhibits can give a true version of the evidence adduced."

The State then gave a "brief summary" of the evidence.

Our comments follow:

(1)

Audit of Haskins and Sells.

The brief of the State said:

> "The jury had the opportunity to observe and hear the witnesses, and draw such in-

> ferences as they were entitled to draw from the fact that the defendant failed to put on the stand representatives of the office of Haskins and Sells, accountants, upon whom they claimed to depend for their figures and the good faith of their actions."
>
> "To rebut the testimony and figures given by Mr. Cohn, the defendants did not put on the stand members of Haskins and Sells, the well-known accountants whose names were used so freely in their advertisement material, as having full charge of all detail work, altho representatives of Haskins and Sells were in Court. (P. 541, L. 18.) The defendants do not even claim that the declaration of the June 30 dividend was based on figures submitted by Haskins and Sells."

This is arguing in a circle; the State complains because the defendants did not call to the stand representatives of Haskins and Sells and then the State admits that this firm had nothing to do with the declaration of the June 30th dividend; and yet the declaration of the June 30th dividend, according to the State, was the head and front of the conspiracy whereby the public were to be deceived into purchasing stock because of the alleged earnings of the company.

There was no occasion to call Haskins and Sells so far as the June 30th dividend is concerned. *This firm did not complete the audit of the books until September 27, 1928* (p. 541, lines 35-40).

The argument of the State assumes that it was necessary to "rebut" the testimony of Mr. Cohn, but his testimony on direct examination was completely overthrown on the cross-examination, in so far as it related to the earnings of the company.

In any event, Cohn's testimony was merely a recital of certain figures which he found in the cor-

poration books; no one disputed the figures; the difficulty with his testimony was that he omitted many elements which should have been considered in determining the question of the propriety of dividends as well as in figuring the earnings of the company (see pp. 36-42 hereof).

In other words, Cohn's testimony amounted merely to a reading to the jury of certain figures which he found in the books, plus an accountant's conclusion as to the earnings indicated by such figures. There was no occasion for calling certified accountants to contradict this conclusion; that was a matter which rested exclusively in the discretion of the Board of Directors within the limitations of the statute; and the State admits *that the declaration and the payment of the dividends were entirely lawful.* We quote from the brief:

> "It was neither alleged nor attempted to be proved, by the state that the payments of dividend on July 2, as of June 30, was illegal, or fraudulent in itself."

And again, in regerring to the argument of the defendants that the directors had the right to declare the dividend from the surplus, the State said:

> "That is not disputed."

Although the State now criticizes the defendants because a representative of Haskins and Sells was not called, it may be observed that the State made a strenuous objection (which was sustained by the trial court) *to the offer of the defendants to prove by Haskins and Sells the balance sheet of March 30, 1929* (p. 527, lines 20-40).

If the State really desired to have the full facts presented to the jury, *within the period of time covered by the indictment,* why object to this offer

of the defendants, and why does the State now argue that the defendants had some ulterior purpose in not putting a representative of Haskins and Sells on the witness stand.

The answer is that the State was itself unwilling to have a representative of Haskins and Sells testify unless the State could *limit* the testimony to the arbitrary date which its own expert accountant happened to select as the date of his report or his examination of the books—notwithstanding the fact that the period of time covered by the balance sheet of March 30, 1929, was within the time limit fixed by the indictment itself.

For further discussion see Point III, page 94-98 hereof.

(2)

Dividends and Earnings.

In the brief of the State it is said:

> "The Company had started business April 1, 1928. During this period, from April 1 to June 30, the company had a net loss of $846.19. This loss resulted from operating expenses, and does not take into account the depreciation in the value of securities held by the company, which showed a decrease in value of $13,781.12, being the difference between acquisition cost and the market value of the securities as of June 30, 1928, the dividend date. In spite of such losses, the company declared a dividend on the preferred stock of 10% as of June 30, 1928. Of this 10%, 6% was the initial dividend requirement, and the 4% was a 50% participation dividend; and the public was told over the radio and through circulars that this 4% participation was the result of 'dividing *net profit* equally between Preferred and Common Stock.' (Ex. S-1, p. 725, L. 29)."

Presumably the reference in the brief to net loss is to the testimony of Mr. Cohn wherein he undertook to give the income from operations and the expenses from April 1st to June 30th, 1928 (Vol. I, p. 179, line 30, to p. 180, line 28).

The brief of the State, however, omits reference to the cross-examination of this witness whereby it appears that in figuring the "loss" for this period he had neglected to take into consideration any of the following items:

(a) Accrued interest on industrial loans.

(b) Declared dividends on securities of the company.

(c) Apportioned dividend earnings up to June 30th.

(d) Profits on rights.

(e) Surplus from premiums on sale of preferred stock.

As we pointed out at pages 36-42 hereof, the failure to take these items into account presents an entirely different picture; instead of a "net loss," as stated by Mr. Cohn, there was a substantial profit amounting to a total of $2,246.78—nearly double the amount of the dividend of $1,208.75. This total of $2,246.78 did not include surplus from premium on sale of stock amounting to $4,504.75 (p. 43 hereof).

The State likewise argues that when the dividend was paid in July, 1928, the company failed to take into account the depreciation in the value of securities. But depreciation in value of securities has nothing whatever to do with *earnings*. It is common practice to carry securities *at cost*.

A depreciation in value of securities is not charged as an operating loss *unless* the securities have, in fact, been sold and a loss sustained on such sale. As admitted by Mr. Cohn himself, he would not say that the "net loss" included the depreciation in the value; "that value shifts every minute in the day" (p. 183, lines 30-35).

Yet the State now asserts that this "loss" does not take into account this depreciation. But such *book loss* is never taken into account in determining the net earnings of a corporation.

All the securities in question were bought outright and placed in the custody of a bank official in the City of Newark (p. 206, lines 20-25). Hence, the "violent depression" in the stock market which Mr. Cohn testified occurred between June 14 and June 30, 1928, had nothing to do with the question of earnings, as the company had no occasion to sell any of the securities at a loss—and as a matter of fact did not do so; on the contrary, from April 1 up to December 31, 1928, the *company made a profit of over $12,000 on the sale of its securities* (p. 211, line 35, to p. 212, line 10).

A complete list of the securities which were owned by the company as of June 30, 1928, is set forth in Exhibit D-18, Vol. II, p. 473, line 35, to p. 474, line 20. For copy of this exhibit see Vol. III, p. 904.

All of these, as testified by Mr. Evans, were "high grade" investments (p. 474, line 20).

Again the State repeated its inaccurate assertions as to the July dividend, saying:

> "Julius H. Cohn, expert accountant, testified that on June 30, 1928, the gross income from all sources was $200.19, and the operating expenses were $1,046.38, with a net loss

> of $846.19 (Case, pp. 179-180). As of that date, a dividend of $1,208.75 was paid, and the public was told that this dividend was from net profits. On June 30, 1928, the company held securities, the acquisition price of which was $168,661.29, and the market value of $154,879.37, showing a depreciation of $17,781.92. That is, on June 30, 1928, the company had a decrease in assets amounting to $14,628.11 (p. 173, line 15, etc.)."

We have already pointed out the fallacy of the argument that a temporary depreciation in the value of securities, purchased and owned outright, should be charged as an operating loss; such depreciation has nothing whatever to do with the net earnings unless and until the securities have actually been sold at a loss.

The State criticizes the allowance in the memo of Mr. Evans for "potential or apportioned dividends" and for the "rights." The first item is discussed on page 39 hereof and the second on pages 39, 40 hereof. But the State made no attempt to prove that the potential dividends were never in fact received; we submit that the Board of Directors in determining several weeks in advance of the payment of a dividend, whether such dividend has been earned and should be declared, may properly take into consideration the reasonable amount of earnings on securities covering the dividend period. As we have shown in our original brief, the estimate of $900 was not only reasonable but lower than the fact (p. 39 hereof).

As to the "rights," this item amounts to $567 and if we leave it out of consideration entirely, there is still a balance of net earnings which was substantially in excess of the amount of the divi-

dend. Here, again, it may be noted that the estimate of the value of the rights as presented to the consideration of the Board of Directors at the time of the declaration of the July dividend turned out to be considerably less than the real value; the estimate was $567; the actual value was $717.92 (p. 40 hereof).

After referring to the alleged representations concerning the dividend of June 30th and the subsequent dividends declared in September and December, 1928, the brief of the State continued (italics ours):

> "Plaintiffs-in-error *do not even contend that these dividends were paid out of net earnings, as represented to the public at various times in 1928;* but claim that had they been allowed, they would have shown that in March, 1929, they could have paid, had they not been involved in Chancery suits, enough dividends to justify the representations. We are not concerned with dividends paid in March, 1929. The State neither attempted to prove nor *alleged* any misrepresentations as to such dividends; and we fail to see how dividends paid in March, 1929, justify or explain misrepresentations made as to dividends paid in June, September and December, 1928."

In this respect the State has entirely misconceived the argument of the defendants; they *do* contend that the dividends were paid out of net earnings. Full discussion of the July dividend and the evidence showing the earnings is found at pages 36-42 hereof.

As to the September dividend, the amount thereof was $2,476.20. Full discussion of the evidence on this subject is found at pages 71-74 hereof.

The State argued that this dividend could not have been paid out of earnings as the only cash available was from paid in surplus, arising from the sale of the preferred stock and the premium. But this argument fails to take into consideration that a substantial part of the operating expenses for the three months' period from July, August and September should be treated as deferred charges; Mr. Evans estimated that a fair allowance for this was $3,500 (p. 515, lines 1-10; p. 517, lines 1-25).

His estimate on this point was not disputed by Mr. Cohn or by anybody else. Hence, even if we leave out of consideration the paid in surplus, there would still be earnings aavilable for dividends substantially in excess of the dividend actually declared and paid.

As to the December dividend, this is fully discussed at pages 74-77 hereof. The State does not dispute the figures, but contents itself by saying that the defendants attempt to show that by certain methods of accounting the December dividend could be said to have been paid out of earnings.

The best that can be said for this part of the State's case is that the question whether the December dividend was paid out of earnings depended upon what theory of accounting was adopted. Mr. Cohn concluded there was a net loss by refusing to make any allowance for deferred charges and by disregarding accrued dividends on investments (p. 77 hereof). The deferred charges alone amounted to over $4,000, which sum was practically equal to the amount of the December dividend.

The argument of the State assumed that there was proof that representations were made to the public that dividends were paid out of "net earn-

ings." The State has confused the question of payment of dividends with the description of the participating feature of this preferred stock. It is quite true that in describing the preferred stock the circulars and radio talks point out that this stock participates up to 50 per cent. of the net profits after deduction of the requirements for the preferred dividends. It is one thing to describe that which the stock certificate on its face sets forth and another to make representations as to the then earning power of that stock.

Again the State misconceived the claim of the defendants as to the *payment* of a dividend in March, 1929, saying the defendants claim that the dividends could have been paid had they not been involved in the Chancery suit. The State has overlooked the fact that the dividend which was paid by the company in March, 1929, had already been *declared* several months prior to that time, to wit, on December 5, 1928, several days before the last sale of the stock; this dividend was to be paid on December 31, 1928, to stockholders of record as of December 20, 1928 (Exhibit D-24, p. 921).

This dividend was in fact paid notwithstanding the Chancery suit—as soon as the restraint was removed by the Court of Chancery, and that, too, in spite of the fact that for nearly three months the business of the company had been suspended by the courts of this State and an unanticipated and heavy expense incurred by reason thereof.

Nothwithstanding all these obstacles, the statement of March 30, 1929, which was offered and overruled, shows that the company not only paid the dividend which had been declared in December, but further shows that another dividend which was payable April 10, 1929, had been *earned* (see Exhibit

D-31 for Iden., pp. 958, 959); the defendants offered to show these same facts by a formal offer of proof which was overruled (pp. 527-529).

The State said:

> "We are not concerned with dividends paid in March, 1929."

Yet the December dividend, with which the State dealt in its brief as within the scope of the indictment, was one of the dividends to which the rejected statement of March 30th referred and was actually paid in March, 1929.

Earnings from April 1, 1928, to January 4, 1929.

The brief for the State asserted:

> "From April 1, 1928, to January 4, 1929, the company had not only no profit, but a net loss of $1,734.81 (page 191)."

The reference in the State's brief is again to the testimony of Mr. Cohn, but there is an omission in the brief. The testimony referred to is:

> "Q. Was the net result a profit or loss? A. A loss of $1,734.81, after giving effect to a provision for revaluation of the securities from the acquisition cost to the quoted market price as of January 4, 1929" (p. 191, lines 18-23).

The brief of the State made no reference to the qualification in the testimony of the witness that the so-called "loss" was obtained *after a revaluation of the securities.*

Likewise the State's brief omitted to say that according to Cohn's own testimony the books of the company did not show either a profit or loss as of

December 31, 1928, "because they were incomplete" as of that date when the witness examined them (p. 206, line 20, to p. 207, line 15). The State also failed to point out that the books *did* show a profit in the sale of securities which, according to Mr. Cohn, amounted from April 1st to December 31st, 1928, to the sum of $12,758.93 (p. 212, line 10).

And again the State failed to make any reference to the testimony of Cohn that the so-called "revaluation" depended on the daily fluctuation of market prices and that the actual profit or loss depended on whether at the time of the actual sale a different price was realized than that which he set up as of January 4th (p. 212, line 20, to p. 213, line 15).

This arbitrary date of January 4, 1929, has neither rhyme nor reason; it has no reference to any of the dates on which dividends were declared, nor to any dates on which dividends were payable, nor to any dates on which sales of stock were made, nor to any dates on which the alleged false representations or any of them were made, but appears to have been utilized for the sole purpose of selecting a date for revaluation of securities when the stock market had slumped.

It is apparent that if, on that date, the market price of the securities happened to be substantially lower than the cost price, then according to the theory of the State there would be a loss as of that date, even though the securities had not actually been sold and even though thereafter they were sold at a substantial profit—which is the very point the defendants attempted to show, that is, up to the period of March 30, 1929, and which was overruled.

Hence, the testimony of Cohn as to the "loss" in earnings as of January 4, 1929, depends upon an arbitrary revaluation by him of securities, without

regard to the fact that they had not been sold, and without regard to the fact that they thereafter were sold at a substantial profit.

But there is a further fallacy in the argument of the State in that the State selects the date of January 4, 1929, as the test date on the question of profit and loss, disregarding the fact that the December dividend, which is one of the subjects of criticism, was declared on December 5, 1928; and no testimony at all was offered by the State to show profit or loss, or the value of securities *as of that date.* For further discussion and statement of the detailed figures for December see pages 74-78 hereof.

It may finally be noted that after spending a large part of the trial in arguing the question of the *legality* of the payment of dividends, the State now admits that the directors had the right to declare dividends from surplus, saying that the State did not allege or attempt to prove that the payments of dividends were illegal or fraudulent.

(3)

Value, Price and Character of Stock.

The indictment charges that the defendants conspired to cheat and defraud divers persons "by making public sale by means of false pretenses of the preferred stock * * * *at a price which was fictitious and above* the actual and market value thereof" (p. 5, lines 30-35).

The State said in its brief:

> "Under the indictment it was not necessary for the State to show that the stock was sold at a fictitious price above the actual and market value. It was sufficient for the State to show that the defendants conspired to sell the stock by means of false pretenses."

This seems to be an attempt by the State to hold the defendants guilty of a crime with which they have not been charged. The State's brief overlooks the fact that the law of the case as set forth in the charge of the court is that the defendants are not guilty unless the jury find that the stock was in fact sold at a price which was fictitious and above the actual and market value. See requests of defendants, Nos. 6 and 8, as charged by the trial court (Vol. II, p. 662, line 15, to p. 663, line 10).

Under this charge a necessary element of the guilt of the defendants was the alleged fact that the price at which the stock was sold was fictitious and above the actual and market value; unless the jury so found, then under this charge "the defendant must be acquitted."

If, at the trial, the State took the view that it was not necessary to prove this fact, a request to charge to that effect might have been submitted in behalf of the State; no such request was submitted, no doubt for the reason that at the trial the State appreciated that it was necessary to prove the allegations of the indictment in order to establish the guilt of the defendants. The present argument is obviously an afterthought—intended to avoid, if possible, the effect of a failure of the State's proof.

After stating that it was not necessary to prove the actual and market value of the stock, the State then proceeds to argue that the stock was not in fact worth the price at which it was sold. The gist of the State's argument seems to be that *any* price that *any* new company places upon its stock is "arbitrary" and therefore fictitious. This is a *reductio ad absurdum;* if the State's argument is sound, then the stock of every newly organized company when first offered for sale has a fictitious price.

As we pointed out in our original brief, the *market* price of the stock was that fixed by the 1500 stockholders and subscribers who bought it first at $14 per share, and then at $15 per share and, finally, at $16 per share, some of them making a number of purchases (see pp. 23-25 hereof).

In its argument under this point the State says that on January 4th the "capital value" of the stock was $10.80 per share.

This is based upon the testimony of Mr. Cohn (p. 193, lines 1-10).

It hardly seems necessary to say that the capital value (or, as it is sometimes called, book value) rarely corresponds to actual value of stock.

It may, however, be pointed out that if on January 4, 1929, there was a capital or book value of the preferred stock of $10.80 per share (the par value being $10 per share), *that value certainly is not fictitious.*

(4)

Representations as to Supervision and Bond.

In various parts of its brief the State argued that there was misrepresentation by the defendants as to the "supervision" of the Department of Banking and Insurance and as to the bond given by the company to the State of New Jersey, under the provisions of the Small Loan Statute of 1914.

The State selected a *few only* of the statements in the circulars and radio talks, without giving the context, and then argues that the inference from the quoted statements is that the supervision was "the same" as that exercised over banks and that the investor was led to believe that the bond was for his indemnity and protection.

The question of representations as to supervision on bond is fully discussed at pages 53-64 hereof, where we pointed out that these representations were strictly accurate.

In reply to the argument of the State it should first be noted that there is *no charge in the indictment* that the defendants had made false pretenses that the supervision of the Department of Banking and Insurance was "the same as that exercised over banks for the protection of the investor and depositor."

Likewise, there was no charge in the indictment that the defendants made representations that the bond was "for the indemnity and protection of investors."

So far as relates to these alleged misrepresentations the State attempts to hold the defendants responsible *on charges which are not made in the indictment.*

But even if such charges had been made, the State failed to prove them; it is unnecessary to burden the court with a series of extracts from the circulars and radio talks, but in view of the quotations therefrom, as presented in the brief of the State, we deem it appropriate to point out that nowhere in any of the circulars or radio talks can be found any statement that the "supervision" was the same as that exercised over banks, and nowhere can be found any statement that the bond was for the protection of investors; on the contrary, the statements both in the circulars and radio talks clearly and repeatedly point out the distinction between banks and small loan companies.

Attention may be called to a few extracts (*not mentioned in the State's brief*):

> "UNIVERSAL FINANCE CORPORATION is an Industrial Banking Institution * * *

whose business consists of loaning money in amounts of $300.00 or less to responsible, approved workers, these loans being repaid in weekly or monthly installments which include payment on principal plus legal interest" (Exhibit S-1, p. 724, line 20).

"Legislation permits them to charge 3% per month on term loans of $300.00 or less. Through this State Legislation the fact is recognized that loans of this small sum justify a rate higher than the legal rate National and State Banks are permitted to charge" (Exhibit S-1, p. 726, lines 15-20).

"Industrial Banking Institutions do not compete with the established commercial banks, but rather supplement and complete the work initiated and carried on by these commercial banks. Each performs a necessary service to the communities in which they are established, their earnings depending upon the extent of their operations—the more money loaned the greater are the net earnings of the corporation" (Exhibit S-1, p. 727, lines 25-33).

"UNIVERSAL FINANCE CORPORATION is authorized to do business under the 'Egan' or 'Small Loan Act,' passed by the New Jersey State Legislature in 1914. The Company is bonded to the State. The business is under the supervision of the Department of Banking and Insurance of the State of New Jersey. It is therefore apparent that the State recognizes that a real need exists for financial institutions of this character—namely, to make individual loans not exceeding Three Hundred Dollars ($300.00). These loans are secured by promissory notes given by the borrower and endorsed by property owners or secured by chattel mortgages, or both. The loans are repaid by monthly installments with interest; thus the margin of security is ample at all times and the element of risk reduced to a minimum" (Exhibit S-2, p. 730, lines 15-25).

"UNIVERSAL FINANCE CORPORATION provides financial assistance to individuals who have no bank affiliations and who need temporary financial aid. The loans are made only to individuals who can show ample security, and who, upon investigation, are shown to be good moral risks" (Exhibit S-2, p. 730, lines 25-30).

Practically the same statements are found in Exhibit S-3, page 736, as in Exhibit S-1.

"It has been stated on very good authority that the industrial loan business is in its infancy. The future of this branch of banking can well be imagined when it is known that there are more than 30,000 banks of all kinds that extend borrowing privileges to but FIFTEEN PER CENT of those who wish to borrow. CONSIDER! There are 85% of the people who wish to borrow through some banking institution but who cannot be accommodated at the commercial banks and trust companies for the very good reason that the needs of this large percentage is for loans of less than $300.00, and these banks and trust companies are not so organized that they can handle a loan of this small amount" (Exhibit S-5, p. 753, lines 10-20).

"There is a branch of the banking business that is coming to the front in leaps and bounds, known as Industrial Banking. These institutions are working under a special license and their business is under the supervision of the banking department of the state in which they are incorporated. They cater to about 85% of the population. The demand for this class of business is far greater than the institutions are prepared to take care of, which necessitates the increase in their capital to meet this demand" (Exhibit S-6, p. 756, lines 25-35).

"Loans are made to salaried employees, wage earners, merchants, manufacturers and

professional men and women of good character and earning power. These loans are secured by chattel mortgages or notes, endorsed by property owners or reputable business men, who must be satisfactory to this corporation and are required to pay the loan, should the borrower fail to make payments as agreed" (Exhibit S-6, p. 759, lines 15-20).

"The Industrial Loan Corporation, whose shares we, as brokers, offer, make loans up to $300.00 at the legal rate of interest as authorized by the State of New Jersey. Reductions in the amounts loaned are made by the borrowers each month, and this principal and interest being payable in monthly installments, gives the corporation a rapid turnover of capital" (Exhibit S-6, p. 759, lines 30-35).

"Just let me quote a few lines from Friday's night edition of October 5th of the New York Evening Journal, page 36, with refernce to industrial banking, and the great opportunity for investment.

Quote: 'That investment capital will find its way into the business of financing small loans. Just as it has been attracted to other recognized industries, is the conclusion of a study of the small loan industry just completed, which says:

' "The business of lending small amounts of money of supplying the constant demand of many millions of honest and worthy people who need tempoary financial help—is on the threshold of a great development. * * * It has been reformed and regenerated in half the states of the Union, in almost all the most important states, and private capital is flowing into it because it has shown itself to be a safe and profitable form of investment.

The safety and profitability of the business are attracting capital to the small loan

field, in the same manner that it finds its way into other recognized industries. The safe and profitable character of the small-loan business, so conducted and legally supervised is proving attractive to outside capital as an investment."' (End of quote.)" (Exhibit S-6, p. 766, line 25, to p. 767, line 18.)

"National and State Banks are very largely local institutions, and confine their operation almost entirely to the communities in which they are located.

Some of the larger banks accommodate customers outside of their own immediate vicinities, but these are quite limited in number. Industrial Loan Institutions operate on a somewhat different system.

They extend accommodations in many different localities and seek to serve worthy individuals over a wider area. Many notable successes have been registered by corporations engaged in the Industrial Loan Business. The field is so enormous that these companies frequently show a capital turnover of surprising volume" (Exhibit S-6, p. 779, lines 5-20).

To the same effect:

"National and State Banks are very largely local institutions, and confine their operations almost entirely to the communities in which they are located.

Some of the larger banks accommodate customers outside of their own immediate vicinities, but these are quite limited in number. Industrial loan institutions operate on a somewhat different system. They extend accommodations in many different localities and seek to serve worthy individuals over a wider area. Many notable successes have been registered by corporations engaged in the industrial loan business.

> The field is so enormous that these companies frequently show a capital turnover of surprising volume. It is a matter of statistical history that out of every 100 financial institutions, 99 are successful; pay good dividends to their stockholders, keep on paying year after year and frequently return the original purchase price to their owners many times over" (p. 781, lines 20-35).
>
> "National and State Banks are very largely local institutions, and confine their operations almost entirely to the communities in which they are located. Some of the larger banks accommodate customers outside of their own immediate vicinities, but these are quite limited in number. Industrial loan institutions operate on a somewhat different system" (p. 783, lines 22-30).

See also the discussion of the small loan business by various authorities as quoted in Exhibit S-16, page 859, and Exhibit D-30, page 947.

We respectfully submit that a reading of the circulars and the radio talks will demonstrate that at no time was there any representation that the supervision over small loan companies was the "same" as that exercised over banks or that the bond to the State was for "the protection of investors"—as now argued by the State; hence, even if such allegations had been made in the indictment, the proof does not sustain them.

An examination of the circulars, radio talks and other literature will disclose that there is not a single instance in which these defendants or anyone representing them failed, in express terms, to differentiate between national banks, state banks, land banks, building and loan associations and the *industrial banking business* carried on by this corporation under the Egan Act or Small Loan Laws,

but on the contrary they gave the year and chapter of the laws of New Jersey authorizing and requiring the licensee to give bond and providing for the supervision by the Department of Banking and Insurance and authorizing a rate of interest greater than that legally collectible by banks or indeed by any company or individual other than one doing business under this particular statute.

The State refers to a form letter (Exhibit S-4, p. 742).

This was a letter over the signature of one of the defendants, W. F. Cawthorne, Treasurer of Financial Investment Corporation (p. 743, line 10).

The State quotes from this exhibit but fails to point out that by direction of the court on motion of the Prosecutor, Mr. Cawthorne was acquitted.

The State argues that the examination by the Department of Banking and Insurance, in so far as relates to the General Corporation Act was "merely casual and incidental."

A sufficient reply to this is found in the testimony of the Examiner of the Department, Mr. Sullivan, called as a witness by the State, from which we quote:

> "Q. Did you at any time during your examination of these companies, or is it one of your duties or requirements that you in any of your examinations of these companies should interest yourself in the conduct of the company so far as the interests of the stockholders are concerned? A. Yes.
>
> Q. To what extent? A. If I notice, during an examination, that there have been some violations of the statute, in those cases I can make a note of it and follow it through.
>
> Q. Violations of the statute in what respect? A. The General Corporation Act, under which the company is incorporated.

Q. Such as what? A. Such as the payment of the legal dividends, or any other thing that might come up, which is a violation of the General Corporation Act.

Q. That would be a violation under the General Corporation Act?

* * * * * *

Q. You say if any such situation came to your notice you would report it? A. Yes, sir" (p. 165, lines 2-40).

It therefore appears that the Department made examination (in part at least) for the protection of the stockholders; and yet the defendants are now charged with corruptly representing that such supervision was exercised by the Department.

(5)

Corrupt Motive.

The State argues that the activities of the defendant were "tainted" with the lack of good faith. This is discussed at pages 25-29 hereof and needs no further discussion except that it may be pointed out that Commissioner Fitzmaurice, in voting for the declaration of dividends, did so because he was told that they would be paid out of earnings and surplus (p. 269, line 15).

We may also call attention to the misleading statement in the State's brief that the commission to the Financial Investment Company amounted to $178,000. The implication in this statement is that as a result of the alleged fraud the defendant Edwards made a profit of this amount. But this is not the fact. It is true that the total commission was $178,000, but out of this amount all expenses of sales were paid, including commissions to salesmen, so that the amount actually received

by the defendant Edwards, or his family, as estimated by the prosecutor, was about $38,000 (p. 28, lines 30-40).

By agreement with the corporation Edwards also paid all its operating expenses up to July 1, 1928.

(6)

Misrepresentations as to Individuals.

The State having failed in its proof of the allegations in the indictment that the defendant made false pretenses to certain individuals named therein and obtained money from them by "color and means of false pretenses" (pp. 9, 10 of Record) now takes the position that the "purpose" of the State's testimony on this subject was merely "to show overt acts in execution of the conspiracy," and that it was not incumbent upon the State to prove the charge of obtaining money under false pretenses.

We have heretofore discussed the construction of the indictment and have pointed out the misconstruction thereof in the State's brief. Hence, it will suffice here to say that in every case of an individual purchaser, including the two named in the indictment, the State tried to show, first, that false pretenses were made to the purchaser, and second, that they purchased their stock *because* of such pretenses.

But in every case the State's proof not only failed, but it was affirmatively shown by the State's witnesses that the alleged false pretenses were not made and that they did not buy stock because of any such pretenses.

This testimony is discussed in detail at pages hereof.

(2)

Reply to Point II.

This discusses certain of the points of the defendants relative to the admission and rejection of evidence, including the overruling the offer to show the financial condition of the corporation as of March 30, 1929.

The following table will facilitate reference to the discussion of these points in this brief:

Assignment and Specification No.	Page of Exception in Record	Point in Brief of Defendants	Page in Brief of Defendants
8	84	II (a)	45
9	85	"	"
12	91	"	"
15	113	"	"
39	417	"	45
45	475–477	V (b)	101
48	511	II (a)	45
49	511	"	"
51	528	II (a) & III	45 & 94
52	528	"	"
53	529	"	"
54	529	"	"
56	535	II (a)	45

The State argued that the trial court properly excluded evidence of the "financial status" of the company *"subsequent to the last sale of stock."*

This is inconsistent with the argument of the State in other parts of its brief where it is said that from April 1, 1928, to *January 4, 1929,* the company had a "net loss"; and again the State

calls attention to the proof that on January 4th the capital value of the stock was $10.80 per share. And, again, the State said that it did not offer proof "as of any date after January 4, 1929, because after that date there was no further sale of stock." But the fact is that there was no sale of *stock as late as January 4, 1929.* This fact must have been clear to the State, for the reason that on *December 27, 1928,* the Prosecutor of the Pleas took possession of all of the property of the company (pp. 36-37), and the company was enjoined from continuing its business by an order of the Court of Chancery on that same day (pp. 969-970); and on December 26th the sale of stock had been officially discontinued by resolution of the board of directors (p. 272, lines 20-40).

The latest date on which any stock was sold was December 12, 1928, on which date a subscription contract was signed by one Helen Eva Pearsall (p. 148, line 20; Exhibit D-11, p. 887). At the trial the State put in evidence the "financial status" of the company as of January 4, 1929 (pp. 191-194), but now seeks to justify the exclusion by the court of evidence of the financial status of the company *within the period of the indictment* upon a theory that is inconsistent with the proof at the trial as evidenced by the record above quoted—and even inconsistent with other parts of the argument in the same brief.

The State admits that the stockholders received all the dividends that were promised, but says that the fact of such receipt was immaterial. Here, again, the State overlooks the charge in the indictment that on July 1, 1928, and on other days between that day and the day of the taking of this inquisition (which was March 30, 1929—p. 10, line

15, of Record), the defendants made certain representations (p. 6, line 20, to p. 7, line 30); and the further charge that on July 1, 1928, and on other days between that day and the day of the taking of the inquisition the defendants made certain false pretenses as to the value of the stock and thereby obtained money from the public (p. 8, lines 1-30).

It seems too plain for argument that the amount of the dividend paid *during the period covered by the indictment* has a material bearing on the value of the stock *during that same period;* likewise the defendants were entitled to show *during the period specified in the indictment* that the stock did in fact pay the dividends as represented, particularly in view of the direct charge in the indictment that the stock which the defendants sold was not such stock as was represented and did not pay dividends at the rate that was represented.

The State further argued that the history of the corporation during the period covered by the indictment is immaterial because the State says the charge in the indictment is that the defendants entered into a conspiracy on March 28, 1928, and that the rest of the indictment merely recites various overt acts. Here, again, the State overlooks that the "criminal means," as set forth in the indictment, consisted of various false pretenses which were made by the defendants not only on March 28, 1928, not only on July 1, 1928, but also between that day and the day of the taking of the inquisition. As set forth above, we respectfully submit that the defendants were entitled to show the financial status of the corporation during the period of the indictment; this evidence was material not only because it related to the issue presented by the State in the charge of the indictment, but also

because it tended to show the motives of the defendants and to negative the intent to defraud (see pp. 94-98 hereof).

Again the State asserted that the first three dividends were paid out of surplus and the public was told that they were out of net earnings.

This assumes the very point in question. We have shown under Point II (pp. 36-78 hereof) that the dividends were paid out of net earnings, and if they were, then it certainly was not a false pretense to say to the public that they were thus paid.

(3)

Reply to Point III.

This refers to the refusal of the court to receive in evidence the files of the Court of Chancery in the suit brought by the Attorney General against the Universal Finance Corporation and the Financial Investment Corporation and the files of said court in the suit between Samuel Klein, complainant, and Universal Finance Corporation, defendant. The point has been discussed under Point IV (pp. 98-100 hereof), and no comment is necessary on the State's brief, except to point out the misleading statement that the defendants "were not ready to show the reason and the facts upon which the Chancery decision might have been based."

The defendants were ready (and anxious) to show the facts upon which the decision *was* based; the offer was of the entire record, including the decision of the Vice-Chancellor and his order discharging the custodial receiver, which set forth the reasons that motivated the Court of Chancery.

(4)

Reply to Point IV.

This discusses several assignments which relate to rulings as to evidence. We sub-join the following table to facilitate reference to their consideration:

Assignment and Specification No.	Page of Exception in Record	Point in Brief of Defendants	Page in Brief of Defendants
18	184	II (a)	45, 46
19	186	"	"
21	210	V (a)	100, 101
24	276	II (a)	47
27	319	I (c)	29–34
35	406–412	II (a)	47–49
36	412	"	"
37	412	"	"
38	412–415	"	"
40	421	I (c)	29–34
50	512	II (a)	46
57	573	"	77
58	576	"	"

Assignments 18 and 19:

As shown above, the answers to these questions were conclusions of law and not statements of fact (pp. 45, 46 hereof).

As to the question addressed to Mr. Evans—which the court overruled—the State claims that this question was as to dividends which were to be paid after January 1, 1929. Here, again, we have the same point that evidence as to earnings, dividends and payments thereof during the period covered by the indictment should have been admitted.

Assignment 21:

This assignment is discussed under Point V(a), pages 100, 101 hereof. The argument therein set forth is that it was competent *on cross-examination* of the State's expert to show that notwithstanding on the particular dates selected by him there had been a depreciation in the value of securities, on dates subsequent, within the scope of the indictment, the stockholders had made a *profit* in the sale of the securities which, on the particular date selected by the witness, had depreciated because of a slump in the market.

Assignment 24:

Discussed at page 47 hereof.

Assignments 27 and 40:

Discussed under Point I (c), pages 29-34 hereof. The defendants were entitled to show that in making representations on the subject of the supervision of the company's business by the Department of Banking and Insurance and the use of the term "Industrial Banking" they were acting in good faith and were not actuated by corrupt motives.

Assignments 35, 36, 37, 38:

These are discussed under Point II(a), pages 47-49 hereof; they raise the question of the admissibility of evidence tending to show—as claimed by the State—that the income from the small loan business *only* was not sufficient to pay certain dividends.

This was outside the charge in the indictment wherein no allegation can be found that the defendants represented that the dividends were paid out of earnings from the small loan business.

The State claimed that if there was error in such ruling, it was cured by the action of the trial judge in charging Request No. 17 of the defendants to the effect that the jury must consider not only the earnings from the small loan business but also all other earnings.

The State, however, overlooks that the court had previously charged to the opposite effect, namely, that the contention of the State was that the earnings resulted from the small loan business and that there was no income sufficient from the small loan business to pay dividends (p. 658, lines 30-40; p. 660, lines 25-35).

This part of the charge was not withdrawn by the trial judge when he charged Request No. 17 and, hence, the erroneous instructions were not cured by a correct one (see pp. 50-53 hereof).

Moreover, even if the court had charged correctly on this subject, that did not cure the error in the admission of the evidence.

Assignment 50:

For discussion see page 46 hereof.

Assignments 57, 58:

These assignments are discussed on page 77 hereof, where the argument is made that in considering the question of dividends the directors may not arbitrarily eliminate one class of earnings and consider others or *vice versa.*

(5)

Reply to Point V.

This point discusses various assignments that relate to the charge of the court and to the refusal to charge certain requests. Following is a table of the assignments and the pages where same are discussed herein:

Assignment and Specification No.	Page of Exception in Record	Point in Brief of Defendants	Page in Brief of Defendants
69	662 & 668	I (d)	34, 35
70	663 & 669	"	"
71	"	I (d) & II (a)	"
73	"	II (a)	60–64
74	"	"	"
75	"	"	"
76	664 & 671	"	48–53
77	"	"	"
78	"	"	"
79	658	"	"
81	659	"	763, 64
82	659–660	"	760, 61
83	660	"	763, 64
84	"	"	749
85	661	"	749
86	"	"	750

Assignments 69, 70, 71:

These relate to the refusal to charge certain requests submitted in behalf of the defendants. These are discussed ata apges 34, 35 hereof.

Assignments 73, 74, 75:

These refer to refusals to charge Requests Nos. 12, 13 and 14.

12 and 13 are discussed at pages 63, 64 hereof and Request No. 14 is discussed at pages 60, 61 hereof.

In connection with the discussion of the refusal to charge these requests, we have also pointed out the error in the body of the charge on the same subject.

The State claims that comments on the facts do not constitute error; this legal rule may be admitted but that does not affect the argument that when the facts are not disputed, the trial court, on a proper request, should charge the rule of law applicable to such facts.

Assignments 76, 77, 78 and 79:

These are discussed at pages 48-53 hereof.

The State admits that the *legality* of the dividends was not an issue and that the issue was the representation as to the *source* of the dividends.

We submit that this admission destroys the State's case; if the declaration of the dividends was legal, how then can it be said that the representations as to their source were made with intent to cheat and defraud stockholders by criminal means?

The State further argues that the parts of the charge in question were merely comments upon the evidence and a statement by the court of what the State "contends."

This argument evades the point of the assignment which is that the State cannot "contend" anything more than is set forth in the *indictment.*

There is no allegation in the indictment that representations were made by the defendants that the earnings resulted from the small loan business.

In order to determine what the State contends we must look at the indictment. Had the State in-

tended to make a claim that the representations were as to earnings from the small loan business, the question at once arises why was such an allegation *omitted* from the indictment.

The parts of the charge quoted at pages 49-51 hereof are, we submit, clearly erroneous in that they do not correctly set forth the contention of the State as alleged in the indictment.

Assignments 81 to 86:

These are discussed at pages 49, 50 and 60-64 hereof.

CONCLUSION.

The judgment of the Supreme Court affirming the judgment of the Essex Quarter Sessions should be reversed and a new trial granted.

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