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Notice of Appeal and Grounds.

(Filed January 10, 1929)

SUPREME COURT OF NEW JERSEY.

HORACE G. PRALL, et als.,
Prosecutors-Appellants,

v.

THE UNITED STATES LEATHER
COMPANY,
Defendant-Respondent.

On Certiorari.

10

To Messrs. Pitney, Hardin & Skinner, Attorneys of
Defendant-Respondent:

Sirs:

20

PLEASE TAKE NOTICE that the prosecutors
appeal to the Court of Errors and Appeals of New
Jersey from the whole of the judgment entered in
this cause on the ground that the Supreme Court
erred in giving judgment for the defendant instead
of for the prosecutors.

Dated, January 5th, 1929.

Yours, etc.,

W. L. McDERMOTT,
Attorney of Appellants.

30

NOTICE OF ARGUMENT

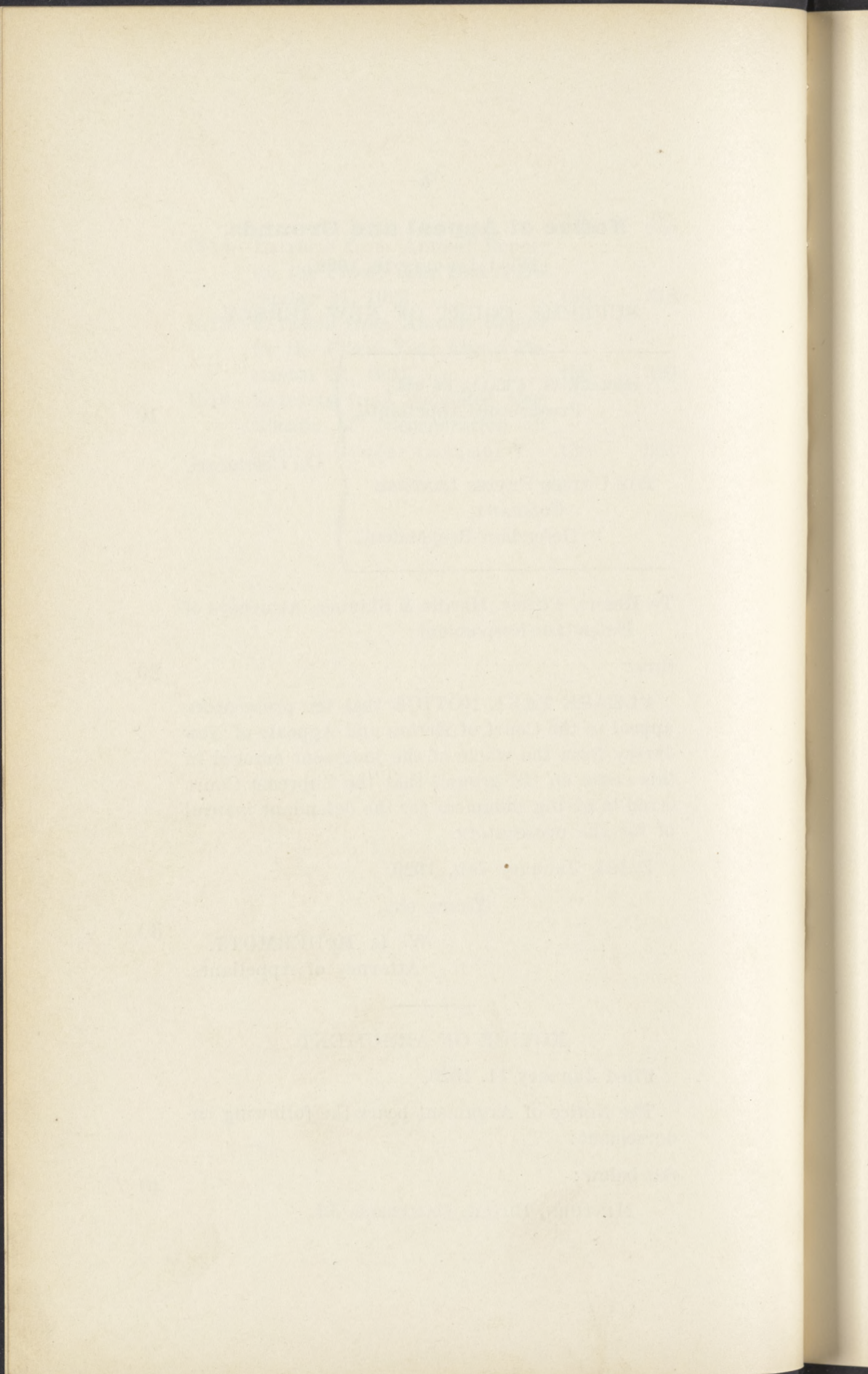
Filed January 11, 1929.

The Notice of Argument bears the following en-
dorsement:

Sat below:

MINTURN, BLACK, CAMPBELL, JJ.

40



Affidavit on Application for Writ.

Filed July 3, 1928.

New Jersey Supreme Court

HUDSON COUNTY.

10

HORACE G. PRALL, et al.,
Prosecutors,

v.

THE UNITED STATES LEATHER
COMPANY,
Defendant.

20

State of New York, }
County of New York, } ss.:

Walter E. Godfrey, being duly sworn according to law on his oath, deposes and says:

That he is a member of the Bar of the State of New York and is the attorney and agent of the following owners of preferred stock of the Central Leather Company: Horace G. Prall; E. Josephine Wilcox; Edwin M. Carter, Frederick S. Cutter, James H. Carter and John H. Dowdell, partners doing business under the name of "Carter & Co."; Barber B. Conable; Frances B. Ackerman; Catherine M. Ackerman; Frederick T. Ackerman; Elizabeth Ackerman; Edward S. Williams; William B. Hibbs and W. W. Spaid, partners doing business under the name of "W. B. Hibbs & Company"; Claire Sondheim; Henry May, Executor of the last will and testament of Isabella C. May, deceased; Walton H. Wilcox; James H. G. Mills, Edward L.

30

40

- Burrill, Edward A. Pierce and Edward E. Bartlett, Jr., partners doing business under the name of "E. A. Pierce & Co."; Herbert Gaytes; Benedict H. Gruntal, Albert M. Lilienthal and Morris Hartig, partners doing business under the name of "Gruntal, Lilienthal & Co."; Louise W. Clarke;
- 10 Ralph B. Barnard, Trustee of Sewell, under agreement dated June 14, 1918; Carrie W. Tower; Arthur C. Parker; Mary E. Parker; Ettie P. Parker; Harry C. Smith; Cecile R. Weil and Isidore Weil.

- That the said Central Leather Company and the United States Leather Company, both corporations of New Jersey, were merged and consolidated pursuant to an agreement made June 22, 1927, and filed in the office of the Secretary of State of New
- 20 Jersey on June 23, 1927.

That the aforesaid stockholders did not vote in favor of the said agreement of merger and consolidation and dissented therefrom and refused to convert their shares of stock into stock of the new or consolidated corporation resulting from the said merger and consolidation, to wit: The United States Leather Company.

- That the said stockholders having so dissented applied to the Circuit Court of Hudson County
- 30 within 30 days after the adoption and filing of the said agreement of merger and consolidation by petition for the appointment of three disinterested appraisers to appraise the full market value of their stock in conformity with the statutes in such case made and provided, and pursuant thereto Walter P. Gardner, John Milton and Peter A. Eckes were appointed appraisers for the purpose aforesaid.

- That thereafter said appraisers, having received evidence in behalf of the said stockholders and of
- 40 the said corporations, filed a report with the said

court wherein they reported, among other things, as follows:

"It would seem to us to be our duty simply to appraise the stock in accordance with the statute and to report to the court what that value is, and to refrain from expressing any opinion as to the law. However, both sides have submitted briefs, and in view of the fact that the statute has not been the subject of judicial construction, and the questions raised are of considerable importance, we have concluded to indicate the basis of our determination.

10

The pertinent language of the statute is:

"* * * to appraise the full market value of his stock without regard to any depreciation or appreciation thereof in consequence of said merger or consolidation.'

20

1. It is the stock that is to be appraised, not the assets of the company.

2. The language of the statute is 'full market value.' We believe these words have a definite legal meaning. Market value is value established as a result of sales; that value is agreed upon between a willing buyer and a willing seller.

30

3. The only sales of the stock in question to which our attention has been drawn have taken place upon the New York Stock Exchange, where the stock was listed and regularly traded in over a period of years. No direct attack was made upon these reported sales, but it is contended on behalf of the petitioners generally that stock exchange sales do not reflect the true value of the stock for a number of reasons; and that the sales of this stock on the Exchange do not reflect its full value.

40

Affidavit of Walter E. Godfrey.

10 We fail to find in the record any competent proof to justify an inference that the sales of this stock on the New York Stock Exchange do not reflect the full and fair market value of the same and therefore we have in accordance with the direction of the statute and in the manner prescribed thereby fixed the full market value of such stock at the time of the consummation of the merger or consolidation in question at \$71.00 per share."

That the said court refused to disallow the said report and on May 4, 1928, made an order confirming the same for the reasons set forth in an opinion filed with the Clerk of the said court.

20

WALTER E. GODFREY.

Sworn to and subscribed before me, a Notary Public duly commissioned and sworn in and for the County and State of New York.

Witness my hand and official seal this 28th day of June, 1928.

CHARLES FARBER,

Notary Public,

30 (Seal) Bronx Co. No. 8, Register No. 3052,
New York County No. 248, Register No. 0-208,
Commission expires March 30, 1928.

NOTE: Application for the writ was made upon informal notice and in the presence of Mr. Waldron M. Ward, attorney of the defendant.

40

Writ of Certiorari.

Filed July 25, 1928.

NEW JERSEY, ss.:

THE STATE OF NEW JERSEY, To the Judges
 of our Circuit Court of the County
 (L. S.) of Hudson, GREETING: We being will- 10
 ing, for certain reasons, to be certified
 of certain proceedings commenced by
 petition to the Circuit Court of the
 County of Hudson for the appointment of ap-
 praisers to appraise the full market value of cer-
 tain shares of stock of the Central Leather Com-
 pany, a corporation of the State of New Jersey,
 merged and consolidated with The United States
 Leather Company, a corporation of the State of
 New Jersey, by the following holders of preferred 20
 stock of the said Central Leather Company dis-
 senting from the said merger and consolidation,
 to wit:

Horace G. Prall; E. Josephine Wilcox; Edwin
 M. Carter, Frederick S. Cutter, James H. Carter
 and John H. Dowdell, partners doing business un-
 der the name of "Carter & Co."; Barber B. Conable;
 Frances B. Ackerman; Catherine M. Ackerman;
 Frederick T. Ackerman; Elizabeth Ackerman; 30
 Edward S. Williams; William B. Hibbs and W. W.
 Spaid, partners doing business under the name of
 "W. B. Hibbs & Company"; Claire Sondheim;
 Henry May, Executor of the last will and testa-
 ment of Isabella C. May, deceased; Walton H. Wil-
 cox; James H. G. Mills, Edward L. Burrill, Edward
 A. Pierce and Edward E. Bartlett, Jr., partners do-
 ing business under the name of "E. A. Pierce &
 Co."; Herbert Gaytes; Benedict H. Gruntal, Albert
 M. Lilienthal and Morris Hartig, partners doing 40

business under the name of "Gruntal, Lilienthal & Co."; Louise W. Clarke; Ralph B. Barnard, Trustee of Sewell, under agreement dated June 14, 1918; Carrie W. Tower; Arthur G. Parker; Mary E. Parker; Ettie P. Parker; Harry C. Smith; Cecile R. Weil and Isidore Weil,

- 10 And of the proceedings and award of the appraisers appointed in the said proceedings and of the order of the court confirming the said award, do hereby command you that you send under your seal to our Justices of our Supreme Court of Judicature, at Trenton, on the 20th day of July next, the record, award, order and proceedings in the matter aforesaid with all things touching and concerning the same as fully and entirely as they remain in our said Circuit Court of the County of
- 20 Hudson, by whatsoever names the parties may be called therein, together with this our writ, that we may further cause to be done thereupon what of right and according to the laws of this State should be done.

Witness, William S. Gummere, Chief Justice of our Supreme Court at Trenton, this thirtieth day of June, Nineteen hundred and twenty-eight.

30 FRED L. BLOODGOOD,
Clerk.

WALTER L. McDERMOTT,
Attorney.

ALLOCATUR

I allow this writ. Let it be sealed.

40 JAMES F. MINTURN,
J. S. C.

Rule to Take Depositions.

Filed July 3, 1928.

NEW JERSEY SUPREME COURT,
HUDSON COUNTY.

HORACE G. PRALL, et al., Prosecutors, v. 	}	10
THE UNITED STATES LEATHER COMPANY, Defendant. 		
On Certiorari to Hudson County Cir- cuit Court.		

Application being made for leave to take depositions to be used in the argument of this cause, 20

It is ORDERED that the prosecutors and the defendant have leave to take depositions for the said purpose.

JAMES F. MINTURN,
J. S. C.

On Motion of

WALTER L. McDERMOTT, 30
Attorney of Prosecutors.

**Consent to Extension of Time for
Return of Writ.**

Filed July 19, 1928.

NEW JERSEY SUPREME COURT,
HUDSON COUNTY.

10

HORACE G. PRALL, et al.,
Prosecutors,

v.

THE UNITED STATES LEATHER
COMPANY,
Defendant.

On Certiorari.

20

It is hereby consented that the time for the re-
turn of the writ allowed herein may be extended to
July 30th.

Dated, July 13, 1928.

PITNEY, HARDIN & SKINNER,
Attorneys of Defendant.

30

40

Order Changing Return Day of Writ.

Filed July 19, 1928.

NEW JERSEY SUPREME COURT,
HUDSON COUNTY.

HORACE G. PRALL, et al.,
Prosecutors,
v.

THE UNITED STATES LEATHER
COMPANY,
Defendant.

10

It is ordered this 18th day of July, 1928, the
defendant consenting thereto, that the return day
of the Writ of Certiorari allowed herein be changed
to July 30th, 1928.

20

FRANK S. KATZENBACH, JR.,
J. S. C.

Return to Writ.

Filed July 25, 1928.

30

In obedience to the command of this writ to us
directed, we, the Judges of the Circuit Court of
the County of Hudson, do hereby certify and send
to the Honorable the Justices of the Supreme Court
of Judicature of New Jersey, within mentioned, the
proceedings and award of the appraisers appointed
therein and the order of the court confirming the
said award, whereof mention is made in said writ,
with all things touching the same, as fully as before
us they remain.

40

Petition.

In witness whereof, we have hereunto set our hands and seals this 14th day of July, 1928.

HENRY E. ACKERSON, JR. (L. S.)

FRANK L. CLEARY (L. S.)

Attest:

10 (L. S.) JOHN J. MCGOVERN,
Clerk of the Hudson County
Circuit Court.

Petition.

(Filed July 22, 1927.)

CIRCUIT COURT OF HUDSON COUNTY.

20

In the Matter

of

30

The Application of HORACE G. PRALL, and others, stockholders of CENTRAL LEATHER COMPANY, a corporation of New Jersey, dissenting from the merger and consolidation of the said CENTRAL LEATHER COMPANY with the UNITED STATES LEATHER COMPANY, a corporation of New Jersey, for the appointment of appraisers to appraise the full market value of their stock.

40 *To the Honorable, the Judges of the Circuit Court
of the County of Hudson:*

11
Petition.

The petition of Horace G. Prall; E. Josephine Wilcox; Edwin M. Carter, Frederick S. Cutter, James H. Carter and John H. Dowdell, partners doing business under the name of "Carter & Co."; Barber B. Conable; Frances B. Ackerman; Catherine M. Ackerman; Frederick T. Ackerman; Elizabeth Ackerman; Edward S. Williams; William B. Hibbs and W. W. Spaid, partners doing business under the name of "W. B. Hibbs & Company"; Claire Sondheim; Henry May, Executor of the last will and testament of Isabella C. May, deceased; Walton H. Wilcox; James H. G. Mills, Edward L. Burrill, Edward A. Pierce and Edward E. Bartlett, Jr., partners doing business under the name of "E. A. Pierce & Co."; Herbert Gaytes; Benedict H. Gruntal, Albert M. Lilienthal and Morris Hartig, partners doing business under the name of "Lilienthal & Co."; Louise W. Clarke; Ralph B. Bernard, Trustee of Sewall, under agreement dated June 14, 1918; Carrie W. Tower; Arthur G. Parker; Mary E. Parker; Ettie P. Parker; George Soule, as Trustee; Cecile R. Weil; Isidore Weil respectfully shows:

Your petitioners are all owners of preferred stock of Central Leather Company, the corporation hereinabove named.

The number of shares of such preferred stock of said corporation respectively owned by your petitioners is as follows:

Horace G. Prall is the owner of 5 shares; E. Josephine Wilcox is the owner of 53 shares; Edwin M. Carter, Frederick S. Cutter, James H. Carter and John H. Dowdell, partners under the name of "Carter & Co.", are the owners of 110 shares; Barber B. Conable is the owner of 50 shares; Frances B. Ackerman is the owner of 20 shares; Catherine

- M. Ackerman is the owner of 10 shares; Frederick T. Ackerman is the owner of 50 shares; Elizabeth Ackerman is the owner of 10 shares; Edward S. Williams is the owner of 10 shares; William B. Hibbs and W. W. Spaid, partners under the name of "W. B. Hibbs & Company" are the owners of 10
20 200 shares; Claire Sondheim is the owner of 100 shares; Henry May, Executor of the last will and testament of Isabella C. May, deceased, is the owner of 50 shares; Walton H. Wilcox is the owner of 6 shares; James H. G. Mills, Edward L. Burrill, Edward A. Pierce and Edward E. Bartlett, Jr., partners under the name of "E. A. Pierce & Co." are the owners of 1050 shares; Herbert Gaytes is the owner of 10 shares; Benedict H. Gruntal, Albert M. Lilienthal and Morris Hartig, partners under the name of "Lilienthal & Co." are the owners of 1500 shares; Louise W. Clarke is the owner of 21 shares; Ralph B. Barnard, Trustee of Sewall under agreement dated June 14, 1918, is the owner of 6 shares; Carrie W. Tower is the owner of 20 shares; Arthur G. Parker is the owner of 10 shares; Mary E. Parker is the owner of 10 shares; Ettie P. Parker is the owner of 40 shares; George Soule, as Trustee, is the owner of 10 shares; Cecile R. Weil is the owner of 100 shares; Isidore Weil is the
30 owner of 20 shares.

On and for some time prior to June 22, 1927, Central Leather Company was a corporation organized and existing under the laws of the State of New Jersey, engaged principally in the manufacture and sale of leather and having its chief office located at No. 15 Exchange Place, in the City of Jersey City, in the County of Hudson, in the State of New Jersey.

- 40 On and for some time prior to June 22, 1927, The United States Leather Company was a corporation

organized and existing under the laws of the State of New Jersey, authorized to engage in the business of manufacturing and selling leather, and having its chief office located at No. 15 Exchange Place, in the City of Jersey City, in the County of Hudson, in the State of New Jersey.

On or about May 19, 1927, the directors of the two corporations aforesaid entered into a joint agreement under the corporate seals of said respective corporations, for the merger and consolidation of said Corporations into a single corporation which should be a new corporation under the laws of the State of New Jersey to be formed by means of such merger and consolidation and prescribing the terms and conditions thereof, the mode of carrying the same into effect, the name of the new or consolidated corporation, to wit, The United States Leather Company, the number, names and places of residence of the first directors and officers of such new or consolidated corporation; the number of shares of the capital stock with the classification thereof, and the amount or value (whether with or without par value) of each share of such new or consolidated corporation and the manner of converting the capital stock of each of said merging and consolidating corporations into the stock or obligations of such new or consolidated corporation, together with other provisions and details as by reference to the said agreement will more fully appear.

In pursuance of the said agreement of merger and consolidation such proceedings were thereafter had that on June 22, 1927, the said agreement was submitted to the stockholders of said Central Leather Company, separately, at a meeting thereof called for the purpose of taking the same into consideration and at said meeting of stockholders the said

agreement of merger and consolidation was considered and a vote of the stockholders of the said corporation by ballot was taken for the adoption or rejection of the same upon which ballot the votes of the holders of two-thirds of all the capital stock of Central Leather Company were cast for the
10 adoption of the said agreement, and thereafter that fact was certified by the secretary of the said Central Leather Company under the seal thereof, and the said agreement so adopted and so certified was on June 23, 1927, filed in the office of the Secretary of State of New Jersey.

In pursuance of the said agreement of merger and consolidation such proceedings were thereafter had that on or about June 22, 1927, the said agreement was submitted to the stockholders of said
20 The United States Leather Company, separately, at a meeting thereof called for the purpose of taking the same into consideration and at said meeting of stockholders the said agreement of merger and consolidation was considered and a vote of the stockholders of the said corporation by ballot was taken for the adoption or rejection of the same, upon which ballot the votes of the holders of two-thirds of all the capital stock of the United States Leather Company were cast for the adoption of the said
30 agreement, and thereafter that fact was certified by the secretary of the said, The United States Leather Company under the seal thereof, and the said agreement so adopted and so certified was on June 23, 1927, filed in the office of the secretary of State of New Jersey.

By virtue of the premises and of the making and perfecting of the said agreement and act of merger and consolidation, and filing the same in the office of the Secretary of State, the two corporations
40 aforesaid became and now are one corporation by

the name of The United States Leather Company, being the new or consolidated corporation into which the two said contracting corporations were so merged and consolidated.

Your petitioners, as stockholders in the said Central Leather Company, at the aforesaid meeting of stockholders of said company did not vote 10
in favor of the said agreement of merger and consolidation and have dissented therefrom, and do now hereby dissent therefrom, and have refused and do hereby refuse to convert their respective shares of stock into the stock of the new or consolidated corporation above mentioned, to wit: The United States Leather Company, and have refused and do hereby refuse to dispose thereof in the manner and on the terms specified in said agreement of merger and consolidation. 20

Your petitioners therefore severally pray that in pursuance of the provisions of the statutes in such case made and provided, to wit "An Act Concerning Corporations (Revision of 1896)," Chapter 185, Laws of 1896, and the amendments thereof and supplements thereto, on reasonable notice to be prescribed by this Honorable Court to the aforesaid consolidated corporation, three disinterested appraisers may be appointed by this Honorable Court to appraise the full market value of their respective shares of stock without regard to any depreciation or appreciation thereof in consequence of the said merger and consolidation and to report their award thereon to this court, to the end that such proceedings may be had thereafter as are authorized and directed by the statutes aforesaid and that your petitioners may have such further relief in the premises as may be just and in accordance with the said statutes. 30

And your petitioners will ever pray, &c.

Dated, July 21, 1927.

WALTER L. McDERMOTT,
Attorney of Petitioners.

10

State of New York, } ss.:
County of New York, }

20 Walter Godfrey, being duly sworn according to law on his oath, says that he is the agent and the attorney of the petitioners named in the foregoing petition and is authorized by them to verify the same in their behalf; that the statements made in the foregoing petition are true according to the best of his knowledge, information and belief.

WALTER GODFREY.

Sworn to and subscribed before me, the subscriber, a notary public duly commissioned and sworn in and for the County and State of New York this 21st day of July, 1927.

30 Witness my hand and official seal on the date last aforesaid.

WILLIAM B. HIGGINS,
Notary Public, Kings Co.

40

Order.

(Filed July 22, 1927.)

CIRCUIT COURT OF HUDSON COUNTY.

In the Matter

10

of

The Application of HORACE G. PRALL, and others, stockholders of CENTRAL LEATHER COMPANY, a corporation of New Jersey, dissenting from the merger and consolidation of the said CENTRAL LEATHER COMPANY with THE UNITED STATES LEATHER COMPANY, a corporation of New Jersey, for the appointment of appraisers to appraise the full market value of their stock.

20

Application by petition to this court having been made by Horace G. Prall; E. Josephine Wilcox; Edwin M. Carter, Frederick S. Cutter, James H. Carter and John H. Dowdell, partners doing business under the name of "Carter & Co."; Barber B. Conable; Frances B. Ackerman; Catherine M. Ackerman; Frederick T. Ackerman; Elizabeth Ackerman; Edward S. Williams; William B. Hibbs and W. W. Spaid, partners doing business under the name of "W. B. Hibbs & Company"; Claire Sondheim; Henry May, Executor of the last will and testament of Isabella C. May, deceased; Walton H. Wilcox; James H. G. Mills, Edward L.

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- Burrill, Edward A. Pierce and Edward E. Bartlett, Jr., partners doing business under the name of "E. A. Pierce & Co."; Herbert Gaytes; Benedict H. Gruntal, Albert M. Lilienthal and Morris Hartig, partners doing business under the name of "Lilienthal & Co."; Louise W. Clarke; Ralph B. Barnard, Trustee of Sewall, under agreement dated June 14, 1918; Carrie W. Tower; Arthur G. Parker; Mary E. Parker; Ettie P. Parker; George Soule, as Trustee; Cecile R. Weil; Isidore Weil, stockholders of Central Leather Company, a corporation organized under the laws of the State of New Jersey, and having its chief office located in the County of Hudson and State of New Jersey, dissenting from an agreement of merger and consolidation between said corporation and The United States Leather Company, a corporation of New Jersey, praying severally for the appointment of three disinterested appraisers to appraise the full value of the shares of stock respectively owned by them without regard to any depreciation or appreciation thereof in consequence of said merger and consolidation, in accordance with the provisions of "An Act concerning corporations (Revision of 1896)" and the amendments thereof and supplements thereto, and the said application and petition having been duly considered by the court:

It is, on this 22nd day of July, 1927, ORDERED that Tuesday, the 16th day of August, 1927, at ten o'clock A. M. (Daylight Saving Time), or as soon thereafter as the court will hear the matter, be fixed as the time, and the Court House, in Jersey City, as the place for the hearing of the said petition for the appointment of such appraisers by the Circuit Court of Hudson County; and that written notice thereof be given to The United States

Leather Company, the consolidated corporation into which the two corporations aforesaid have been merged and consolidated, on or before the 27th day of July, 1927.

It is FURTHER ORDERED that said petition and this order be filed in the office of the Clerk of the County of Hudson. 10

FRANK L. CLEARY,
Judge of the Hudson County
Circuit Court.

On motion of:

WALTER L. McDERMOTT,
Attorney of Petitioners.

20

30

40

Order.

(Filed Aug. 16, 1927.)

CIRCUIT COURT OF HUDSON COUNTY.

10

In the Matter

of

20

The Application of HORACE G. PRALL, and others, stockholders of CENTRAL LEATHER COMPANY, a corporation of New Jersey, dissenting from the merger and consolidation of the said CENTRAL LEATHER COMPANY with THE UNITED STATES LEATHER COMPANY, a corporation of New Jersey, for the appointment of appraisers to appraise the full market value of their stock.

30

Application by petition to this Court having been made on the 22nd day of July, 1927, by Horace G. Pratt; E. Josephine Wilcox; Edwin M. Carter, Frederick S. Cutter, James H. Carter and John H. Dowdell, partners doing business under the name of "Carter & Co."; Barber B. Conable; Frances B. Ackerman; Catherine M. Ackerman; Frederick T. Ackerman; Elizabeth Ackerman; Edward S. Williams; William B. Hibbs and W. W. Spaid, partners doing business under the name of "W. B. Hibbs & Company"; Claire Sondheim; Henry May, Executor of the last will and testament of Isabella C.

40

May, deceased; Walton H. Wilcox; James H. G. Mills, Edward L. Burrill, Edward A. Pierce and Edward E. Bartlett, Jr., partners doing business under the name of "E. A. Pierce & Co."; Herbert Gaytes; Benedict H. Gruntal, Albert M. Lilienthal and Morris Hartig, partners doing business under the name of "Lilienthal & Co."; Louise W. Clarke; 10
Ralph B. Barnard, Trustee of Sewall, under agreement dated June 14, 1918; Carrie W. Tower; Arthur G. Parker; Mary E. Parker; Ettie P. Parker, Harry C. Smith; George Soule, as Trustee; Cecile R. Weil; Isidore Weil, stockholders of Central Leather Company dissenting from the merger and consolidation of said corporation with The United States Leather Company, for the appointment of three disinterested appraisers to appraise the full market value of their respective shares of 20
stock without regard to any depreciation or appreciation thereof in consequence of the said merger and consolidation; and the court having ordered that notice thereof be given to said The United States Leather Company, and the said petitioners and the said The United States Leather Company now appearing pursuant to said application and notice; it is, on this 16th day of August, 1927,

ORDERED that Walter E. Gardner, Peter A. 30
Eckes and John Milton be appointed appraisers to appraise the full market value of the stock of the aforesaid petitioners in said Central Leather Company respectively owned by them without regard to any depreciation or appreciation thereof in consequence of the aforesaid merger and consolidation; and for the purpose set forth in the said petition to proceed herein in all respects in accordance with the statutes in such case made and provided. 40

It is further ORDERED that said appraisers give ten days' notice to said petitioners and said The United States Leather Company of the time and place when they will meet and proceed to execute their duties hereunder.

- 10 It is further ORDERED that said appraisers file their report with the Clerk of the Hudson County Circuit Court on or before January 6, 1928.

HENRY E. ACKERSON,
Judge, Hudson County Circuit Court.

(Note: By subsequent order the time above limited for the filing of the appraisers' report was extended to February 6, 1928.)

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Report of Appraisers.

(Filed Jan. 20, 1928.)

CIRCUIT COURT OF HUDSON COUNTY.

In the Matter

of

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The Application of HORACE G. PRALL, and others, stockholders of CENTRAL LEATHER COMPANY, a corporation of New Jersey, dissenting from the merger and consolidation of the said CENTRAL LEATHER COMPANY with THE UNITED STATES LEATHER COMPANY, a corporation of New Jersey, for the appointment of appraisers to appraise the full market value of their stock.

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Pursuant to an order of this court made in the above entitled proceeding, bearing date the 16th day of August, 1927, the undersigned were appointed appraisers pursuant to section 108-A of "An Act concerning corporations (Revision of 1896)" to appraise the full market value of the stock of Horace G. Prall; E. Josephine Wilcox; Edwin M. Carter, Frederick S. Cutter, James H. Carter and John H. Dowdell, partners doing business under the name of "Carter & Co."; Barber B. Conable; Frances B. Ackerman; Catherine M. Ackerman; Frederick T. Ackerman; Elizabeth Ackerman; Edward S. Williams; William B. Hibbs

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- and W. W. Spaid, partners doing business under the name of "W. B. Hibbs & Company"; Claire Sondheim; Henry May, Executor of the last will and testament of Isabella C. May, deceased; Walton H. Wilcox; James H. G. Mills, Edward L. Burrill, Edward A. Pierce and Edward E. Bartlett, Jr., partners, doing business under the name of "E. A. Pierce & Co."; Herbert Gaytes; Benedict H. Gruntal, Albert M. Lilienthal and Morris Hartig, partners doing business under the name of "Lilienthal & Co."; Louise W. Clarke; Ralph B. Barnard, Trustee of Sewell, under agreement dated June 14, 1918; Carrie W. Tower; Arthur G. Parker; Mary E. Parker; Ettie P. Parker, George Soule, as Trustee; Cecile R. Weil; Isidore Weil; in the Central Leather Company respectively owned by them, without regard to any depreciation or appreciation thereof in consequence of said merger and consolidation.

- We respectfully report that we were attended by *Walter L. McDermott, Esq., with Walter E. Godfrey, Esq., of the New York Bar*, for Horace G. Prall; E. Josephine Wilcox; Edwin M. Carter, Frederick S. Cutter, James H. Carter and John H. Dowdell, partners doing business under the name of "Carter & Co."; Barber B. Conable; Frances B. Ackerman; Catherine M. Ackerman; Frederick T. Ackerman; Elizabeth Ackerman; Edward S. Williams; William B. Hibbs and W. W. Spaid, partners doing business under the name of "W. B. Hibbs & Company"; Claire Sondheim; Henry May, Executor of the last will and testament of Isabella C. May, deceased; Walton E. Wilcox; James H. G. Mills, Edward L. Burrill, Edward A. Pierce and Edward E. Bartlett, Jr., partners doing business under the name of "E. A. Pierce & Co."; Herbert Gaytes; Benedict H. Gruntal, Albert M. Lilienthal and Morris Hartig, partners doing business under

the name of "Lilienthal & Co."; Louise W. Clarke; Ralph B. Barnard, Trustee of Sewell, under agreement dated June 14, 1918; Carrie W. Tower; Arthur G. Parker; Mary E. Parker; Ettie P. Parker, George Soule, as Trustee; Cecile R. Weil; Isidore Weil; *Walter E. Merritt, Esq.*, for A. Hicks Lawrence; *George B. Sleigh, Esq.*, of counsel with *Mark Townsend, Jr.*, for Linwood Female College, a corporation of Missouri; *Waldron M. Ward, Esq. and Shelton Pitney, Esq.*, of Pitney, Hardin & Skinner, and *Joseph M. Hartfield, Esq.*, and *L. D. Adkins, Esq.*, of the New York Bar, for the respondent, the United States Leather Co., and took the testimony of the witnesses produced before us. That testimony and the exhibits offered and marked in evidence are annexed to and returned with this report. 10

There is a sharp conflict between the petitioners and the Company as to the meaning of that part of the statute which the appraisers are called upon to administer. It is contended on behalf of the petitioners that under the statute in question the stockholder is entitled to the value of net assets of the company represented by his shares. For the Company it is insisted that the mandate of the statute is clear and unequivocal and that the petitioners are only entitled to the market value of the stock as of the date when the consolidation took effect as determined by sales of the stock in the open market. 20 30

The plan of consolidation was proposed to the stockholders of the respective companies in October, 1926. It received the approval of the requisite number of stockholders of each of the two companies, and on February 25, 1927, the agreement of merger was signed on behalf of said companies; the agreement was later and on June 23rd, 1927, filed 40

in the office of the Secretary of State. The parties agree that the merger was consummated upon that date.

10 It would seem to us to be our duty simply to appraise the stock in accordance with the statute and to report to the court what that value is, and to refrain from expressing any opinion as to the law. However, both sides have submitted briefs, and in view of the fact that the statute has not been the subject of judicial construction, and the questions raised are of considerable importance, we have concluded to indicate the basis of our determination.

The pertinent language of the statute is:

20 “* * * to appraise the full market value of his stock without regard to any depreciation or appreciation thereof in consequence of said merger or consolidation.”

1. It is the stock that is to be appraised, not the assets of the company.

2. The language of the statute is “full market value.” We believe these words have a definite legal meaning. Market value is value established as a result of sales; that value is agreed upon between a willing buyer and a willing seller.

30 3. The only sales of the stock in question to which our attention has been drawn have taken place upon the New York Stock Exchange, where the stock was listed and regularly traded in over a period of years. No direct attack was made upon these reported sales, but it is contended on behalf of the petitioners generally that stock exchange sales do not reflect the true value of the stock for a number of reasons; and that the sales of this stock on the Exchange do not reflect its full value.

We fail to find in the record any competent proof to justify an inference that the sales of this stock on the New York Stock Exchange do not reflect the full and fair market value of the same and therefore we have in accordance with the direction of the statute and in the manner prescribed thereby fixed the full market value of such stock at the time of the consummation of the merger or consolidation in question at \$71.00 per share. 10

W. P. GARDNER,
JOHN MILTON,
PETER A. ECKES,
Appraisers.

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Testimony.

CIRCUIT COURT OF HUDSON COUNTY.

In the Matter

of

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The Application of HORACE G. PRALL and others, stockholders of CENTRAL LEATHER COMPANY, a corporation of New Jersey, dissenting from the merger and consolidation of the said CENTRAL LEATHER COMPANY with the UNITED STATES LEATHER COMPANY, a corporation of New Jersey, for the appointment of appraisers to appraise the full market value of their stock.

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TRANSCRIPT OF SHORTHAND NOTES OF TESTIMONY taken on hearing in the above stated matter, this 16th day of September, 1927, at ten o'clock in the forenoon, at the office of the New Jersey Title Guarantee & Trust Company, No. 83 Montgomery Street, Jersey City, New Jersey, before John Milton, Esq., Hon. Walter P. Gardner, Peter A. Eckes, Esq., the appraisers, heretofore appointed in the above matter.

APPEARANCES:

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WALTER L. McDERMOTT, Esq., with WALTER E. GODFREY, Esq., of the New York Bar, for Horace G. Prall; E. Josephine Wilcox; Edwin M. Carter,

Frederick S. Cutter, James H. Carter and John H. Dowdell, partners doing business under the name of "Carter & Co."; Barber B. Conable; Frances B. Ackerman; Catherine M. Ackerman, Frederick T. Ackerman; Elizabeth Ackerman; Edward S. Williams; William B. Hibbs and W. W. Spaid, partners doing business under the name of "W. B. Hibbs & Company"; Claire Sondheim; Henry May, Executor of the last will and testament of Isabelle C. May, deceased; Walton H. Wilcox; James H. G. Mills, Edward L. Burrill, Edward A. Pierce and Edward E. Bartlett, Jr., partners doing business under the name of "E. A. Pierce & Co."; Herbert Gaytes; Benedict H. Gruntel, Albert M. Lilienthal and Morris Hartig, partners doing business under the name of "Lilienthal & Co."; Louise W. Clarke; Ralph B. Barnard, Trustee of Sewell, under agreement dated June 14, 1918; Carrie W. Tower; Arthur G. Parker; Mary E. Parker; Ettie P. Parker; George Soule, as Trustee; Cecile R. Weil; Isidore Weil.

WALTER E. MERRITT, Esq., for A. Hicks Lawrence, a dissenting preferred stockholder having 250 shares of preferred stock.

GEORGE B. SLEIGH, Esq., representing MARK TOWNSEND, Jr., attorney for the Linwood Female College, a corporation of the State of Missouri.

WALDRON M. WARD, Esq., and SHELTON PITNEY, Esq., of PITNEY, HARDIN & SKINNER, and J. M. HARTFIELD, Esq., and L. D. ADKINS, Esq., of the New York Bar, for the respondent, The United States Leather Co.

Mr. Ward: May I ask Mr. Merritt whether an order was made on petition in this matter?

Mr. Merritt: I know I told Mr. O'Mara, of Wall, Haight, Carey & Hartpence, to proceed on the 8th instant, to which date our matter was adjourned, that is to say, to have appraisers appointed. I think he told me that they were appointed, the same appraisers. Whether a formal order was entered
10 I cannot say.

Mr. Ward: We have no notice of the order entered.

Mr. Merritt: I will check up and advise you later.

Mr. McDermott: The total of the holdings of these stockholders whose names I have read off, being preferred stockholders, is about 3,500 shares. They are a dissenting minority, and the statute has given this somewhat cryptic direction as to how
20 they shall be satisfied if they do dissent. We are prepared this morning to offer the testimony of a witness who will satisfy you, I think, of his competency to make an analysis of the matters he deals with and so on, with a discussion of the value of this stock, which we believe will enlighten you gentlemen to a considerable extent. I am going to ask Mr. Godfrey, who has spent much time on the matter, to interrogate this witness.

Mr. Ward: Mr. McDermott proposes to offer a
30 witness to testify to the value of the stock. I presume he intends to bring out opinion evidence as to what its value is. It seems to us that the statute, as applied to the facts in this case, narrows the issue and practically makes evidence of that nature incompetent. The statute says that the stockholders shall receive the full market value of the stock. Now, that is a phrase which appears in other statutes. For instance, under our Inheritance Tax Law,—it is settled construction of that
40 law by our state officials for many years—securi-

ties are appraised for inheritance tax purposes according to the market of the day of the death of the decedent, if there be a market, and only in case there be no market does the State supervisor of inheritance taxation go into what is sometimes termed the intrinsic value or book value.

In many instances the question arises in the common law courts. For instance in determining the amount of damages to the value of personal property or securities, if there be a market for the commodity—which stocks certainly are in these days—the court almost invariably will take the market value as the basis for fixing the value of the property or as evidence of the value. 10

We all know very well that there is a very sharp line between the book value of stock and the market value. Nobody attempts to ascertain the value of stock on the New York Exchange by seeing the market value. Is not that true as to the value of United States Steel or National Biscuit Co.? 20

The market is sometimes said to be “right” because it represents the composite judgment of investors all over the world, and there can be no truer index of the value of a stock which is actively traded in on the New York Stock Exchange, as this stock has been for years, than the price which the stock brings in the market, unless the market be affected by temporary causes. Now, the market for this stock has been, like other stocks, as favorable as anyone could ask for. During the last few years money has been easy, the market has been very strong, the speculative fervor on the part of the public resulting in the highest prices being paid and having been paid for some time. It seems to the respondent that the problem is simply, in the terms of the statute, “to ascertain the full market value” of this stock. 30
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Now, in the first place, there is no difficulty about ascertaining what its market value is. The statute annexes one qualification, that it shall be "without regard to any depreciation or appreciation thereof in consequence of the merger."

10 No one says—at least the evidence would not support the view—that this consolidation which has become effective has depreciated the value of the stock. It certainly has appreciated it. The movement of the stock shows that the company was in such condition prior to the plan which was worked out, that the consolidation was a benefit to the stockholders.

20 These views, we submit, are supported by the judicial authorities. I could collect hundreds of cases from the books discussing "value", "market value," "true value," and "intrinsic value." If I may, at this time, I would like to refer the Commissioners to a few cases. For instance, the case of *Douglas v. Merceles*, 25 N. J. Equity, 144. In that case, there was a reference by the Chancellor to a Special Master to ascertain the market value of certain shares of stock as of a certain date. The Master reported a value based upon his appraisal judgment of the value of the company's holding of certain lands. He disregarded the transactions in
30 the stock and reached a price based, as I say, on his appraisal of the company's holdings. The Chancellor sustained exceptions to the report and said: "The market value and the intrinsic value are by no means necessarily the same; the terms are not convertible. The intrinsic value of a stock is not only not an infallible guide to its price in the market, but is, in fact, no guide at all. A stock intrinsically worthless may bring a good price, while, on the other hand, one of great intrinsic value may be
40 greatly depreciated. If, under such a reference as

that under consideration, the Master should find no guide to which he could reasonably commit his conclusion—if he should find no market price within a reasonable period either before or after the date to which his inquiries are to be directed, the intrinsic value may then enter into his estimate. But the order in this case calls for a report as to the market value, a term deliberately employed as being exactly expressive of the meaning of the Court. And if a marketable value could be established, the Master was bound to find and report it.” 10

That case was cited with approval in the United States Circuit Court of Appeals in our circuit, in the case of *United States v. Reading Co.*, 295 Fed. 551, 554, in which the Court said: “So great is this difference between intrinsic value and market value that intrinsic value is not admissible in evidence as indicating what a commodity would sell for at a specified time under particular circumstances, if bona fide market value can be established.” 20

Mr. Gardner: Was that particular stock offered in a primary market?

Mr. Ward: I think they were dealing with another problem.

There was a case in New Hampshire—*Gregg v. Northern Railroad Company*, 67 New Hampshire, 452; 41 Atlantic 271, in which the Court stated the question at issue was the market value of certain stock of the Northern Railroad Company. That was a case in which the stock was condemned in an award to the plaintiff in condemnation proceedings, and there was evidence not only of actual sales of the stock in the market but evidence of an offer to the railroad company whose stock was held, to lease it on certain terms. That offer had been introduced as tending to show that the true market value of the 30 40

shares was higher than the market price. Other evidence was offered for the same purpose. The Court set aside the award on the ground that such evidence was inadmissible in view of the fact that evidence of the actual market value was available and constituted the most trustworthy indication of market value. The Court said: "In general, the price paid at such sales and at the brokers' board in Boston for Northern Railroad stock and for various other New Hampshire stocks, there sold often enough to attract the attention of investors competent to investigate the question of value, may well be taken as the market value. The market value of property that has no regular market price because not often sold in a public market of that kind, may require evidence of all the elements that would be considered by competent bidders in such a market. In this case evidence of those elements was added to evidence of a regular market price in a manner and to an extent we cannot suppose would have been allowed if an erroneous view of the law had not been taken. Much of this objectionable evidence would hardly have been admitted if it had been understood that it could have been rejected as confusing and misleading."

In another case from our New Jersey reports, *Budd v. Van Orden*, 33 N. J. Equity, 143, affirmed 33 N. J. Equity, 564, the question arose between mortgagor and mortgagee as to the value of mortgaged real estate. The Court said: "The only absolute test we can have of a merchantable article is what it has been sold for at a fair sale. All other means of ascertaining the value of a merchantable commodity are speculative and must, to a greater or less extent, be uncertain. A sale is a demonstration of the fact, while estimates, even by the best judges, are simply matters of opinion which, at best, are only approaches to the fact."

There was a case recently in the Circuit Court of Appeals, for the Second Circuit, New York, *Borg v. International Silver Company*, 11 Fed. (2d), 147. In that case there was objection that the defendant corporation was selling Treasury stock for less than its value. Judge Hand said: "The suggestion that the book value of the shares is any measure of their actual value is clearly fallacious. It presupposes, first, that book values can be realized on liquidation, which is practically never the case; and second, everyone knows that the value of shares in a commercial or manufacturing company depends chiefly on what they will earn, on which balance sheets throw little light. When all is said, value is nothing more than what people will pay for the shares, given as wide an opportunity to come in as is reasonably possible."

Therefore, while I submit to the Commission and do not make any assertion as to whether the Commission can receive evidence of book values or of proposed values of the property holdings of the company, I submit that the evidence will probably be misleading, confusing and futile, because the preferred shares of this company have had an actual market for years and there is no difficulty whatever in showing what the market sales are.

Mr. Merritt: Mr. O'Mara has told me that an order was entered appointing the same appraisers and that he would send a copy of the order to Mr. Ward.

The Chairman: The Commission feels that the evidence should be taken. You may proceed.

Mr. Godfrey: In response, if I may briefly respond to the remarks of Mr. Ward, as to what we intend to do, I will say that we intend to offer facts, not opinions. We are going to testify to absolute facts which have been held forth by the company

itself. The points raised by my opponent are either based on former decisions of the Court and not on the trend of the time or based upon the stand taken by the Court on the question of inheritance tax. That is an arbitrary stand for the purpose of simplicity only. It will appear that in every state
10 in the Union, that the moment of a man's death, the value of the stock sold out in the open market shall be the value of the stock for the purpose of placing a tax thereon. It is an arbitrary rule and does not affect the enterprise at all. The Interstate Commerce Commission has said very recently and on many occasions that the fair market value of a railroad should not be based on the earning power of the railroad because that is a fluctuating fact, and that is what influences people to buy or sell stock—
20 purely the earning power and not the value of the property at all. There may be, and there are, railroads in the country—I have met the situation in my appearances before the Interstate Commerce Commission—who have a larger earning power than other railroads which have greater property value. There are numerous instances, well known to this Commission, where companies desiring to be conservative, should desire to reduce the book value of their properties, not to pay large taxes—to
30 be very conservative, have never declared dividends, and that is always reflected in the price on Wall Street. Take two companies on the Exchange today, one declaring a dividend and the other not paying a dividend. The one paying a dividend will go up and the one not paying will be below par invariably and Wall Street today reflects that situation.

40 The present Revenue Act says that in determining the fair market value of the stock in a corpora-

tion as of March 1, 1913—they decided that in 1926—due regard should be given to the fair market value of the assets of the corporation as of that date, and that seems to be the general trend of opinion today.

We shall be glad to submit a short memorandum in reference to these facts. 10

Mr. Ward: I presume it is understood that the testimony about to be given will be considered in all of the petitions, of which there are several before the Commission at this time.

Mr. Milton: Is that in accord with the understanding of everyone?

Mr. McDermott: We cannot object. We are offering it.

Mr. Sleigh: With respect to whether the testimony should be binding on everyone, I do not think we should be called upon at this time to say that we will accept or not accept the testimony. We do not know. I do not know Mr. Stern. I have never met the gentleman. I do not know what sort of an investigation he has made. I think the testimony should be submitted for the purpose of assisting the appraisers. It is up to the appraisers to state whether they will use it in fixing value or not. I do not think we should be called upon to say whether we will accept the testimony or not. 20 30

The Chairman: Is it acceptable to you, Mr. Ward, to leave it in this shape—that Mr. Sleigh may avail himself of the testimony if he sees fit and if later on he finds that he desires to offer other evidence, he may do so.

Mr. Ward: He certainly has a right to offer other proof but I assume he should either accept or reject this testimony as a whole.

Mr. Sleigh: I am not entirely in accord with that view. 40

Mr. Ward: I do not think Mr. Sleigh can take the position, after the witness goes on the stand, that he may pick out the favorable parts and reject other parts.

10 Mr. Merritt: I think Mr. Sleigh's position is a fair position and I would like to have the same ruling as to myself and my client.

The Chairman: Of course we cannot force anybody to accept testimony. This testimony is being offered on behalf of Mr. McDermott and his clients. Let us proceed.

ALFRED J. STERN, sworn as a witness on the part of the applicants, Prall, et al., testifies as follows:

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Direct Examination by Mr. Godfrey:

Q. Mr. Stern, what is your business? A. I am an accountant, a certified public accountant, of the State of New York.

Q. How long have you been an accountant? A. I have been a certified public accountant for nineteen years.

30 Q. And you practice your profession as such in the State of New York? A. Yes, sir.

Q. Are you a member of the Society of Accountants in the State of New York? A. Of the New York State Society of Certified Accountants.

Q. What position do you hold in that society? A. I happen to be a director there.

Q. During your career as an accountant have you gone through finance reports gotten up by companies and digested them, investigated them and drawn up reports about them? A. I have.

40 Q. Are you a public accountant today for New York Exchange firms? A. I am.

Q. And for several of them? A. Yes, sir.

Q. Then you are familiar with digesting, looking over and investigating companies listed on the New York Stock Exchange? A. I have done that; yes.

Q. Mr. Stern, have you looked at certain data in connection with the Central Leather Company? 10
A. I have.

Q. Will you kindly show us what you have looked at? A. I have looked at the annual reports of the Central Leather Company. I have also examined the listing papers of the new U. S. Leather Company filed with the New York Stock Exchange.

By Mr. McDermott:

Q. You mean the consolidated company? A. 20
The consolidated company.

By Mr. Godfrey:

Q. You may go on. A. I have also examined a photostat copy of the preferred stock certificate of the Central Leather Company and have further examined the Standard Statistics reports or cards on the Central Leather Company.

Q. Referring to the application made for the listing of the merged stock, does that refer to the financial affairs prior to the merger? A. The 30
statements therein, that is, the financial statements therein contain reference to the condition prior to the merger.

Mr. Godfrey: May we have it understood on the record that the date of the merger was June 23, 1927?

Mr. Ward: That is correct.

Q. Will you kindly show me those documents that you have referred to? A. Here they are.

10 Mr. Godfrey: I desire to offer in evidence the annual report (together with the report of the president) of the Central Leather Company for the fiscal year ended December 31, 1926.

Mr. Ward: We object to this and to all testimony in behalf of the petitioner, other than testimony of the price at which preferred stock has sold on the market within a reasonable range of time prior to the effective date of consolidation, and I would like to reserve that objection without renewing it.

20 The Chairman: Very well. That may be understood.

Mr. Godfrey: I offer in evidence the annual reports of the Central Leather Company for the fiscal years ended December 31, 1926, December 31, 1925; December 31, 1924.

30 I also offer in evidence printed form of the application of the United States Leather Company for listing on the New York Stock Exchange, the one that bears thereon references to the Central Leather Company prior to June 23, 1927. I also offer in evidence photostat copy stock certificate of the Central Leather Company for preferred stock.

I also offer in evidence sections of the Standard Corporation Record referring to the Central Leather Company, known as Standard Statistics.

40 Mr. Ward: I reserve any objections we may have to the Standard Statistics.

Mr. Milton: Does that objection go to the form of the proof?

Mr. Ward: Yes; it goes to the form of the proof as hearsay.

Mr. Godfrey: As to the Standard Statistics, do you mean?

Mr. Ward: Yes.

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Mr. Godfrey: I offer them subject to verification. These Standard Statistics are known and accepted throughout the United States. They have been offered and accepted in courts of law. If they are incorrect we will verify those parts which are claimed to be incorrect and submit them later subject to verification.

Mr. Gardner: They include the range of stock sales too, don't they?

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Mr. Godfrey: Yes, they do and they are all based on the records of the company and reports made by the decree of the New York Stock Exchange based upon filed lists, except little summaries therein of the opinions of the men who get it out, which may be entirely disregarded.

The Chairman: Do you still press your objection, Mr. Ward?

Mr. Ward: No, sir; I do not.

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The Chairman: They may be received in evidence.

(Annual Report of the Central Leather Company for the fiscal year ending December 31, 1926, is marked Exhibit A-1.)

(Annual Report of the Central Leather Company for the fiscal year ending December 31, 1925, is marked Exhibit A-2.)

(Annual Report of the Central Leather Company for the fiscal year ending December 31, 1924, is marked Exhibit A-3.)

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(Listing Application of the United States Leather Company, marked Exhibit A-4.)

(Photostat copy of preferred stock certificate of Central Leather Company is marked Exhibit A-5.)

10 (Section C-41 of Standard Statistics is marked Exhibit A-6.)

(Section C-42 of Standard Statistics is marked Exhibit A-7.)

Q. Referring to the exhibits on behalf of Prall, et al., A-1 to A-7, have you read and examined these exhibits, Mr. Stern? A. Yes, sir.

Q. From your examination of these exhibits have you prepared and made up a statement of the facts therein contained? A. Yes, sir.

20 Q. Tell us what you find in the Exhibits A-1 to A-7 inclusive, which you examined? A. Exhibit A-1, being the annual report of the Central Leather Company for the fiscal year ended December 31, 1926, contains a consolidated balance sheet of the Central Leather Company as of that date, showing preferred stock of a par value of \$33,299,050. Common stock, \$39,701,030.50, making a total of \$73,000,080.50, and a deficit of \$18,520,064.01, thus showing net assets of \$54,480,016.49. The preferred stock being \$33,299,050, the net assets are
30 the equivalent of \$163.60 per share of preferred stock.

In this consolidated balance sheet certain reserves are stated upon the liabilities side aggregating \$1,904,323.58, and the net assets before taking these reserves were \$56,384,340.07, which is equivalent to \$169.32 per share of preferred stock.

This consolidated balance sheet of December 31, 1926, shows cash, call loans and liberty bonds of
40 \$9,349,325.34, as against total current liabilities of

\$2,014,770.29, leaving an excess of cash or equivalent over current liabilities of \$7,334,555.05, which in itself is equivalent to over \$22 per share of preferred stock. This amount is exclusive of the investments which are shown on the balance sheet amounting to \$9,205,982.53, which includes Central Leather Company First Lien sinking fund bonds at par value of \$2,943,000. 10

This same balance sheet shows total current assets, exclusive of these investments of \$38,095,460.66, as against current liabilities of \$2,014,770.29, leaving net current assets of \$36,080,690.37, which is the equivalent of \$108.35 per share of preferred stock. This amount is exclusive of the investments of the sinking fund, of the property accounts and of preferred charges.

The property accounts are stated in this balance sheet at \$21,749,057.10. 20

In the next annual report for the fiscal year ended December 31, 1925, there has been included a special announcement to stockholders, which was sent to them under date of December 1, 1925, which reads as follows:

“Following the lines of the Engineers’ Report made in connection with the refunding of this company’s bond issue, which matured April 1, 1925, the officers of the company, during the current year, have been carefully surveying the company’s physical property and analyzing its other assets with a view to determining their sound values and utility for the current and future operations of the company’s business. 30

“As a result of this survey and analysis the officers of the company have recommended and the Board of Directors has instructed that the book values of the company’s assets as of December 30, 1925, be reduced by adjustments aggregating 40

\$7,407,078.44, to cover the writing off of unnecessary plants and the establishment of sound current values for the remaining plants and other assets of the company. These adjustments have no relation to and will not affect the operating results of the company for the nine months ended September 30, 1925, as heretofore recorded.

“The balance sheet of September 30, 1925, adjusted to reflect the above mentioned reduction, shows that, after providing for all the liabilities of the company and the preferred stock at par and accrued preferred dividends, there is a balance of \$9,807,370.46, which represents a book value of the common stock of \$24.70 per share, figured on the going-concern basis.”

20 By Mr. Ward :

Q. Would it not be proper, Mr. Stern, to read the paragraph which follows? A. Glad to do so: “No further explanation for the necessity for the above action of the directors need be given than the statement that the company owned plants capable of producing two-thirds of the heavy leather consumption of the United States, whereas its volume of business aggregates only one-third. The effect on operating expenses of the attempt to operate, or keep in readiness for operation, this excessive plant capacity is obvious. The action of the directors, as described in the above notice, will materially improve operating conditions.”

By Mr. Godfrey :

Q. You may go on with your analysis. A. The Standard Statistics card, Exhibit A-6, page 2, states as follows: “Reduction of bonded debt in the last twelve years has been \$23,565,000, while the company’s conservative policy has been reflected

during the same period in a marking down of its property account (covering timber lands, railroads and tannery and other plants) from \$61,855,000 to \$21,749,000. This has been due partly to removal of timber and usual property depreciation, but largely also to writing off excessive book values. From 1914 to 1920 the company eliminated from property account \$23,334,000 of 'intangible values.' The property account at the end of 1920 stood at \$40,200,000. Since then lower figures have been shown in each annual report, notably that of 1925, when the reduction was close to \$11,000,000, of which the company reported that \$7,407,000 represented adjustments 'to cover the writing off of unnecessary plants and the establishment of sound current values for remaining plants and other assets'." 10

The Standard Statistics report likewise shows that December 31, 1920, the property account stood at \$40,200,532. The annual reports of the company which I have examined show that the property account for the last three years as reported, is as follows: 20

December 31, 1924, \$34,366,410.65.

December 31, 1925, \$23,522,068.28.

December 31, 1926, \$21,749,057.10. 30

In the annual report of the company for the year 1924, it is stated, referring to the new bond issue of \$15,000,000, which was then placed upon the property in connection with the refunding of maturing bonds, as follows:

"The new bond issue above described is secured by a trust indenture which specifically pledges the proceeds of the timber operations of your company for the payment of the sinking fund and interest requirements, and the timber properties will be so 40

operated that the net receipts therefrom should completely retire the \$15,000,000 twenty year six per cent. first lien sinking fund gold bonds well within the date of their maturity."

10 It appears from the company's report for 1926 that in the two years 1925 and 1926, the sinking fund gold bonds had been retired through the sinking fund in the amount of \$1,801,000, and that in addition thereto there was in the sinking fund \$1,156,968.80, a total of approximately \$3,000,000.

20 The company's report for 1926 shows that the property account, including the bark and timber lands, comprising 339,008 acres of land owned in fee; 991,921,429 feet growing sawing timber; also sundry chestnut wood for extract purposes; pulpwood, railroad ties, cedar posts and poles and other forest products, \$9,361,177.14.

30 The significance of these figures in comparison is to show that at the rate at which the sinking fund is accumulating, these timber lands will be taken care of and eliminated by operation of the sinking fund, and that the bonds will not, to any extent, become a lien against the current assets which were previously noted. In connection with this phase of the situation, it may be noted that in the listing papers to the New York Stock Exchange (Exhibit A-4) it is stated that as of the date of this paper, namely June 24, 1927, \$8,146,000 of these bonds are outstanding in the hands of the public, so that although \$15,000,000 had been issued at or about January 1, 1925, that bond issue had been retired so that only \$8,146,000 was outstanding in the hands of the public on June 24, 1927.

By Mr. Ward:

40 Q. What page is that on? A. That is on page 5, under the heading "Funded Debt."

By Mr. Godfrey:

Q. Go on with your answer. A. In the listing papers it is stated, page 6, with respect to "Depreciation and Depletion:

"Until January 1, 1926, no depreciation was figured on tanning properties, but these properties were kept up at 100% efficiency through constant improvements and repairs, which amounts were charged to income. Since January 1, 1926, a reserve for depreciation has been accrued monthly and charged to income on all properties of the former Central Leather Company and its subsidiaries at rates considered adequate by the officers. 10

"The Depletion policy of the former Central Leather Company was as follows:

"To charge a rate per foot on timber cut, which would return capital invested in timber lands when all timber had been cut." 20

Upon these same listing papers, under the caption "Earnings", a tabulation is presented showing: "Net Reduction through depletion (not representing cash outlay)" and another column: "Net Reduction of Plant account through depreciation and abandoned plants (Not representing cash outlay)".

In view of the statements made above, which I have just quoted, that no depreciation had been charged prior to 1926, it is interesting to note that the items charged off, included under his caption which presumably represent abandoned plants written off, were as follows: 30

1923	\$1,278,877.98
1924	780,310.35
1925	2,840,555.30

In connection with the repairs made for maintenance and replacement, the only reports which I have examined show the following expenditures for maintenance, renewals and replacement:

10	1923	\$2,228,452.02
	1924	1,365,656.33
	1925	1,495,070.37

And in 1926, \$845,307.44 for ordinary maintenance and repairs and \$450,975.13 written off for depreciation, making a total of \$1,296,282.57.

20 The significance of these figures, together with the report of the Engineers which has been referred to, is to my mind indicative of the fact that abandoned plants have been written off either in their entirety or to a purely nominal figure, and that the plant account, as stated in the annual report of December 31, 1926, is most conservatively stated.

30 The photostat copy of the stock certificate which I have examined, provides as follows: "The holders of said preferred stock shall be entitled to receive or have set apart, out of the surplus or net profits of said company, as and when declared by its Board of Directors, a dividend at the rate of, but never exceeding, seven per centum per annum, cumulative, on all such preferred stock outstanding at the time, which dividend shall be payable yearly, half yearly or quarterly, as the Board of Directors may, from time to time, fix and determine, and before any dividend shall be set apart for, or paid on, the common stock. In case of the liquidation or dissolution or winding up (whether voluntary or involuntary) of the corporation, the holders of the preferred stock shall receive cash to the amount of the par value of such preferred

40 stock, together with all accrued and unpaid divi-

dends thereof (but no more) before any payment to the holders of the common stock."

From the annual report of the company for the year 1926, it appears upon the balance sheet that cumulative dividends are in arrears since April 1, 1921. The amount of cumulative dividends in arrears at various recent dates is, therefore, as follows:

10

June 30, 1926	\$36.75
December 31, 1926	\$40.25
March 31, 1927	\$42.00
June 30, 1927	\$43.75
September 30, 1927	\$45.55

The application of the provision just quoted from the preferred stock certificate, whereby preferred stockholders are entitled to receive, in the event of liquidation or dissolution or winding up, whether voluntary or involuntary, par plus cumulative dividends in arrears is, therefore, represented as follows:

20

June 30, 1926.....	\$136.75
December 31, 1926.....	\$140.25
March 31, 1927.....	\$142.00
June 30, 1927.....	\$143.75
September 30, 1927.....	\$145.55

30

These amounts are all less than the amounts shown in the balance sheet of December 31, 1926, as being the net tangible assets of the company.

By the Chairman:

Q. You do not mean that exactly, do you, Mr. Stern? A. When I say "net tangible assets" that is the amount complete; in other words, as I have said before, the net assets, after deducting reserves December 31, 1926, were \$54,480,016.49, which is

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equivalent to \$163.60 per share of preferred stock, which is more than the amount to which the preferred stock is entitled under this merger.

By Mr. Gardner :

- 10 Q. They could liquidate and have something left over? A. Right. They could liquidate and pay the preferred stockholders more than they were entitled to under the preferred stock certificate and there would still be something left for the common stock.

The last figure with respect to the financial condition which has been presented is the statement of December 31, 1926, and the financial condition at that time might be affected or would be affected by reason of the results subsequent to that period.

- 20 The operating results for the three months ending March 31, 1927, show that there was a profit for this quarterly period of \$568,475.27, according to the company's figures.

The Standard Statistics report (Exhibit A-7) refers to the fact that on June 23, 1927, Dow, Jones & Company said that net income of this company for the six months ending June 30, 1927, would approximate slightly more than \$1,000,000 equivalent to about \$3.50 a share on \$33,299,050 old 7% preferred.

- 30 The purpose of testifying to these things is to show that from such information as we have, there has been an increase of assets since December 31, 1926, and that there has not been a decrease; which likewise indicates that at the present time, the full dividend upon the old preferred stock was being earned.

40 With respect to the financial condition of the company and its profits, the reports for the last

two or three years have been progressively more optimistic or favorable. In the report for 1924; it states: "The tremendous surplus supply of leather was reduced during the year to practically a normal basis."

"Your company's organization has been and is continuing to be reconstructed to as economical an operating basis so that it may be in a position to share in the reasonable profits which it is earnestly hope the heavy-leather industry will realize. 10

In the 1925 report it is stated:

"The company is now in a position to begin to realize profits at least equivalent to the present preferred stock dividend requirements, and the profits should materially improve, as the general conditions in the industry improve, but, from the standpoint of the preferred stockholders, it must be remembered that dividend payments cannot be resumed until the aggregate profits have wiped out the deficit of \$19,054,973.59." 20

Despite the fact that is said—

By Mr. Ward:

Q. Won't you read the rest of it? A. Yes. The report continues: "which is equivalent to over eight years dividend requirements, and established a sufficient surplus to warrant dividend declarations and payment. From the common stockholders' standpoint, before he can expect a dividend, he must wait until the deficit is wiped out and all accumulated dividends on the preferred stock have been pa.d." 30

I think it may be said parenthetically that all of this might have been done by converting from stock of par value to stock of non-par value. 40

Mr. Ward: I ask that that be stricken out.

The Chairman: It may stand, I think.

By Mr. Godfrey:

10 Q. You may continue. A. Despite these enthusiastic expectations, as contained in the 1925 report which was dated March 23, 1926, the profit as reported in the company's report for 1926, before deducting bond interest was only \$1,494,919.58, as compared with \$2,548,014.59 for the prior year. It may be noted in this connection, whereas in all prior years the sales or gross business that the company has done, has been reported, this amount of gross business had been eliminated from the 1926
20 report.

By Mr. Ward:

Q. Won't you also state the net corporate income at that time? A. For the year 1926, a surplus of \$534,909.58; for the year 1925; a surplus of \$1,465,075.99.

By Mr. Eckes:

30 Q. That is after bond interest? A. That is after bond interest; yes.

By Mr. Ward:

Q. That is net income after interest and all charges? A. Yes; the net income after interest but before preferred stock dividend requirements.

By Mr. Godfrey:

40 Q. Proceed. A. In the 1924 report a statement is made as follows:

"It will be recalled that, beginning with the year 1923, your company inaugurated a policy of annually setting aside a sum, taken principally from the proceeds of the timber operations, which fund has been used in the acquisition for the treasury of the company's first mortgage 5% bonds. As a result of this policy, a total principal amount of bonds aggregating \$18,128,100 was acquired up to and including December 31, 1924. The interest on these bonds has been set aside in a 'Special Depreciation Fund' which aggregated a net amount of \$2,687,598.60 as of December 31, 1924. The 'Special Depreciation Fund' has been and will be used to offset the capital depreciation resulting from the abandonment of certain surplus tanning and extract plants of the company."

The significance of this statement is that during this period of years there has been \$2,687,598.60 received as income, which is not reflected in the income statement of the company.

Now, if I may, I will scan over my notes to see if there is anything else I want to bring out.

It may be noted that in addition to the fact that maintenance, repairs and renewals have all been provided for by charges to income each year up to 1925, the tannery plants and real estate valuations, as stated in the balance sheets of December, 1924 and December, 1925, show a decrease for 1925 of \$8,286,514.92, of which only \$5,700,000 is accounted for in the writing off pursuant to the engineers' report, which, in itself, indicates that there has been further writing off than has been previously reported.

The gross sales and earnings of the company, as reported in its annual reports were as follows :

1922	\$55,249,114.23
1923	\$52,826,919.50
1924	\$41,483,791.73
1925	\$41,122,551.09
1926—	not reported.

10 Mr. Ward: Will you accept my statement, to be verified later, that the gross business for 1926 was \$37,904,584?

 Mr. Godfrey: Will you concede on the record that your report for 1926 did not contain a statement of the gross business for that year?

 Mr. Ward: That is correct.

20 Q. Proceed. A. The annual reports of the company give the total earnings, after deducting operating expenses, repairs and maintenance, taxes and so forth. They also state as a deduction from this figure: "Less expenses and losses of all companies," which amounts are as follows:

1923	\$3,291,389.63
1924	\$2,962,994.66
1925	\$3,879,394.77
1926	\$2,512,346.06

30

By Mr. Eckes:

 Q. Have you any idea what that means—"Expenses and losses of all companies"? A. No, sir; I have not.

 In other words, what I mean to bring out by stating these things is the extent to which the earnings and expenses of the company are reported in different annual reports.

40 Q. You say: "All companies." Have you any

idea what that means? A. The Central Leather Company is apparently a holding company besides an operating company.

By Mr. Ward:

Q. That is before interest on bonded debt? A. I was just giving expenses and losses. Then, besides that they give "Income from Investments" and the interest upon the bonded debt; in other words, the detailed information given in the annual report is as follows: Gross sales and earnings; total earnings after deducting operating expenses, repairs and maintenance, taxes, and so forth; expenses and losses as one figure; income from investments; interest on bonded debt; discount on bonds. This statement needs to be modified to this extent that they also state the amount for repairs and maintenance and the amount written off for depreciation, but for 1926, gross sales were not stated. 10 20

The Chairman: Is it conceded that the gross sales for 1926 were as stated by Mr. Ward?

Mr. Godfrey: Subject to any correction that Mr. Ward wants to make, or subject to any revision that we may wish to make on looking over the books, if we have that opportunity later. 30

Q. Proceed. A. The amount written off for depreciation, the amount written off for abandoned plants in each year, are not stated in the annual reports but are stated in the listing papers to the New York Stock Exchange, of the new company.

By Mr. Gardner:

Q. Are these statements anything out of the ordinary in the way of industrial reports? A. Well, 40

I just happen to have in my pocket a statement of the General Motors Corporation, and I think that the information there is a little bit more complete. I think, as a rule, it is conceded now that companies making reports should report the amount written off for depletion and depreciation. I think
10 the Stock Exchange now requires it as far as listings are concerned.

By Mr. Ward:

Q. That appears on the listing papers? A. Yes, sir; it appears on the listing statement, but it does not appear in the annual reports. That is the point I was making.

20 By Mr. Godfrey:

Q. In the 1926 report, which you refer to on the third page of your memorandum, it appears that the company had out on call loans, \$7,800,000 in excess of the cash in banks and on hand? A. Yes, sir.

Q. That shows that they have taken out of the working capital of the company, not needed for working capital to run their plant, actually,
30 \$7,800,000, placed on call loans, does it not? A. Yes, sir.

Q. Is that a usual condition found in the financial report of an industrial company? A. I think there are numerous industrial companies that find themselves sufficiently flourishing to be able to do that at the present time.

Mr. Godfrey: The Commissioners are well aware of the nature of a call loan, that it is practically equivalent to cash.
40

Q. Have you anything else to say? A. In connection with the cash position of the company, the 1926 report states as follows:

"However, in spite of these unfavorable conditions, since April 1, 1925, when your company issued \$15,000,000 of twenty year 6% first lien sinking fund gold bonds and borrowed \$1,500,000 for working capital, the following has been accomplished up to and including December 31, 1926: 10

"The bank loan has been paid.... \$1,500,000.00

"Bonds have been called for redemption 1,801,000.00

"Payments have been made to the Sinking Fund for bond reduction 812,371.59

"Bonds of the Company have been acquired in the open market and held in the Treasury..... 2,943,000.00 20

"The Company has loaned out at interest 7,800,000.00

"The Company has bank balances in cash 1,525,201.49

\$16,381,573.08

"In the first two months of 1927, there has been a further addition of over \$1,432,000 to the above total. 30

"This amount of cash has been derived principally from the liquidation of the company's surplus inventories, including lumber sales, although practically \$2,000,000 of the amount is represented by the net profits of the company from its operations for the two years ending December 31, 1926."

Q. So that, even prior to June 23, 1927, or December 31, 1926, the amount of money out on call 40

loans and cash in bank exceeded the outstanding bonded indebtedness, did it not—the money on call loan and the cash in bank amounted to \$9,325,201.49? A. The amount on call and the amount of cash in bank amounted to \$9,325,201.49, and the outstanding bonded indebtedness was a difference
10 between \$13,199,000 as shown by the liability side of the balance sheet and \$2,943,000 of bonds held in the treasury as shown on the assets side, so that the bonds in the hands of the public amounted to \$10,256,000.

Q. You gave me a figure of \$8,000,000? A. \$8,000,000 was the amount shown as of June 23, 1927, as shown in the listing papers. You were asking me as of December 31, 1926. The latest balance sheet available is December 31, 1926.

20

By Mr. Eckes:

Q. Just mentally, the amount of cash and call loans as of December 31, 1926, was how much? A. As of that date about Nine millions.

By Mr. McDermott:

Q. Can you state as of June 23, 1927, in refer-
30 ence to any comparison? A. I do not think it would be justifiable to take the assets of one date and compare them with the liabilities of another. We might inquire what those assets were as of June 23, 1927.

By the Chairman:

Q. In other words, you have the outstanding bonds as of June 23, 1927, and the amount of cash and call loans as of December 31, 1926? A. That
40 is what I mean.

Mr. Ward: The closing statement as of June 22, 1927, shows:

Cash	\$1,687,322.72
Call loans	\$7,500,000.00

By Mr. Godfrey:

10

Q. Therefore, the cash and call loans did exceed the outstanding bonded indebtedness? A. According to the information furnished by Mr. Ward.

Mr. Gardner: Mr. Godfrey, do you know whether this merger was brought into the courts and litigated? Has it been litigated?

Mr. Godfrey: We are not concerned in any litigation.

20

Mr. Ward: A bill of complaint was filed on July 20, 1927, in equity, by a complainant by the name of John Windhurst. An order to show cause was made by Vice Chancellor Fielder. The order to show cause was heard by Vice Chancellor Bentley on July 26, 1927. Two other complainants were added. Then Vice Chancellor Bentley, on August 1st, dismissed the order to show cause obtained by the complainants. He denied any preliminary restraint and also refused to grant the complainants a stay pending possible appeal. He rendered a short opinion at that time which, while prepared under some pressure as to time I think might be quite instructive.

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Mr. Gardner: No such evidence as we have here was ever presented in New Jersey in the courts.

Mr. Ward: Oh, yes; the complainants in

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that case presented data as to their rights as preferred stockholders.

Mr. Gardner: I mean these figures?

10 Mr. Ward: Yes; the balance sheets were all exhibits before Vice Chancellor Bentley. He said the case was as fully presented as on final hearing.

Mr. Godfrey: As I understand it, the Court did not go into the question of figures, but decided the matter on one ground, namely, that Mr. Windhurst was only a stockholder for a few weeks prior to the bringing of the proceedings and was not a stockholder until after the beginning of this merger or sale of assets, which was started in October, 1926. He was not entitled to the
20 consideration that should be given a stockholder for years.

Mr. Ward: While that might have been true as to Windhurst, the other complainant, Ingraham, had been a stockholder for years.

The Chairman: To make it absolutely certain what was said and what facts were before the Vice Chancellor, may I suggest that a copy of the pleadings filed on each side with Vice Chancellor Bentley be furnished to us?
30

Mr. Ward: Yes.

Mr. Merritt: May I ask Mr. Ward if it is not a fact that the complainants in that suit were not dissenting stockholders under the statute?

Mr. Ward: They were asking for equitable relief. They elected not to come into this proceeding.
40

Mr. Merritt: None of the complainants in that suit had attended the stockholders meeting at which the merger was brought up and discussed, to put themselves in the position of petitioning for the appointment of appraisers?

Mr. Ward: I do not know about the complainant Windhurst, but the complainant Ingraham appeared at the stockholders' meeting. Mr. Windhurst appeared by his counsel. Mr. Ingraham was represented by one of the members of his family. They said they thought the plan was unfair and they dissented from it, but apparently they did not mean it in the statutory sense.

10

Mr. Merritt: None of the petitioners in that proceeding filed any petition for the appointment of appraisers?

20

Mr. Ward: No; they did not.

Mr. Gardner: Has the question of the preferred stock cumulative dividends been adjudicated?

Mr. Ward: Not that I know of.

Mr. Godfrey: Will you concede that a dividend was declared on July 1, 1927, of seven per cent on that outstanding preferred stock?

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Mr. Ward: I do not see the relevancy of anything of that kind. The petitioners refused to come into the consolidated company.

Mr. Godfrey: The purpose is this, to show that on July 1, 1927, within a few days after the merger based upon the profits earned from January 1, 1927, to June 23, or the end of June, 1927, they were able to declare upon the profits earned by the old Central Leather

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a dividend on the preferred stock of the new company and paid them \$5 a share in cash. That dividend must have been based upon the earnings of the Central Leather Company.

10 Mr. Ward: Not necessarily. Dividends are paid out of the treasury of the consolidated corporation.

Mr. Eckes: Who declared the dividend that you refer to?

Mr. Godfrey: The new company.

The Witness: Standard Statistics reports of the declaration of a dividend on the prior preferred stock of the United States Leather Company, declared June 23, payable Aug. 1.

20 Mr. Eckes: That prior preferred stock, was that the result of this merger? Did the prior preferred stock of the merged company represent the interest of the old Central Leather Company?

The Witness: The old preferred stock of the Central Leather Company received in exchange one-half share of preferred stock in the new company, plus three quarters of a share of Class A stock in the new company.

30 Mr. Eckes: Was there any other prior preferred stock of the new company?

The Witness: No. The merger plan is contained in Standard Statistics.

By Mr. Godfrey:

Q. What is your opinion of the full market value, the market value of the preferred stock of the Central Leather Company on June 23, 1927, as shown by the records and facts that you have testified to?

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Mr. Ward: I object to the witness answering that question because it calls for the witness' opinion on the very question at issue. In a negligence case in the courts of law, a witness would not be permitted to answer, giving his opinion as to whether the defendant is negligent or not. I object to it, because Mr. Stern, while qualified to examine the financial statements and records and comment upon them, has not been shown to be qualified to express an opinion to the market value of stock, which is a different matter; furthermore because no proper basis has been laid for the expression of that opinion; an examination of the books and records does not offer the proper basis for the expression of an opinion as to the value of stock. 10 20

The Chairman: We will take the evidence.

A. I can only answer that question is this way, that predicated upon the ability of the company to earn an amount in excess of its dividend requirements upon the preferred stock, in other words, if the dividends in the future were to be considered as being amply secured, and if the company's management had the confidence of the public, the stock should be worth par plus accrued dividends. 30

Q. From the figures that you have given us of the company, does that show, regarding the preferred stock, that the value of the preferred stock was \$163? A. It shows that the net assets were equivalent to \$163 per share of preferred stock, but the preferred stock priority would, according to the certificate, be limited to par plus accrued unpaid dividends. 40

Q. Then, the full market value of the preferred stock as of June 23, 1927, was the figure of \$142, was it not? A. That was the figure as of March 31, 1927.

By. Mr. Gardner:

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Q. You mean its liquidating value? A. Right.

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Mr. Godfrey: I want to state with respect to the plan, that in October, 1926, a committee appointed by the directors or stockholders, preferred and common, got together and decided on a plan for the readjustment of the capital of the Central Leather Company, and the plan as then sent out by these holders of preferred and common stock, was to the effect that the Central Leather Company's assets were to be sold to a new company to be formed, and the stock of the new company to be issued in its place. That is, for the preferred stock outstanding the new company was to give 50% thereof in prior preferred stock for proposed dividend of \$5 per share, and for the balance of the 50% outstanding, they would receive what is known as Class A stock to the same amount, except that this Class A stock—the equivalent in figures—was to be increased by 50%. Then this increase, together with the increased amount or three-quarters of it, was to be taken and given to the preferred stockholders for the balance of their 50% of preferred stock, and this Class A stock did not have any cumulative dividend, but it did have a 4% non-cumulative dividend and there were to be dividends on the common

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stock to the extent of 2% more. Is that right?

Mr. Ward: \$2 a share more.

Mr. Godfrey: And Class A stock was to be non-par value; in other words, to receive \$4 a share and \$2 more if the company could pay it; and the holders of the common stock were to receive share for share. 10

There was no meeting of the stockholders held from October, 1926, until March, 1927, a period of over six months. I came into this matter, being retained by the stockholders about March, 1927, and there was a stockholders' meeting called, I believe in April, 1927, at which time only the election of directors was passed on—nothing else—and there was nothing said about the plan—no reference to what had been out to the public for several months. At that meeting I appeared and objected to the plan, saying it was unfair to the preferred stockholders to take their past accumulations away to satisfy large holders of common stock. I also stated that under the statute law of New Jersey, there was no authority for a sale of all the assets; that there was for a merger or consolidation, and that it always could be put up to a Court of Equity as to whether the court would permit it or not, whether they would permit or enjoin the sale of all the assets, and the courts of New Jersey have decided different times that the decision of the majority was not controlling. Then, suddenly, in the end of May, 1927, the management of the Central Leather Company decided to change it from a sale of all the as- 20 30 40

10 sets to a merger and consolidation, which was conformable to the statute law of New Jersey, and sent out notices of a meeting to be held on the 23rd of June, 1927. It was a different plan than was originally intended although the original plan provided for a change of plan in the opinion of the holders of the preferred and common stock committee.

20 This plan also provided for the taking away of the right to vote from preferred and common stockholders for a period of ten years and giving it to a board of managers, three of the common stock and six of preferred stock, and that is the way we appear in court today, under the merger and consolidation. We are not taking up the question of good faith, not going into that, not touching upon the question of whether they should have done it or should not have done it, but we are simply coming before this Court, claiming the statutory rights of minority stockholders, dissenting stockholders, asking for the value of our stock as shown by the assets of the company.

30 By Mr. Godfrey:

Q. Have you finished, Mr. Stern? A. The only other thing I would say, a good deal of this testimony that I have given is covered by a tabulation which I have made, and I would suggest that for the convenience of the committee, such tabulation, if agreeable to both sides, might go in as an exhibit.

40 Mr. Godfrey: I offer in evidence copy of memorandum gotten up by the witness from

the financial reports and exhibits produced here.

Mr. Gardner: Mr. Godfrey, do you know of any award made in this state under this statute?

Mr. Godfrey: None. I have searched the records and I can find none, in fact, as I understood from Mr. Runyon, after petitions have been filed and appraisers appointed, settlement has resulted and there has been no further litigation and therefore, there are no court records on the question, unless Mr. ward knows of any. 10

Mr. Ward: I am not in a position to say that I do.

Mr. Gardner: What happened in the Morris Canal matter? 20

Mr. Ward: That was under a special act passed in 1922, I believe. I am not familiar with the proceedings.

Mr. Godfrey: I offer in evidence "Plan of Merger and Consolidation." This is the one that came out in October.

Mr. Ward: Yes; it includes a sale or consolidation.

Mr. Gardner: Was there sufficient stock deposited with the company to make this thing operative before the final plan was announced? 30

Mr. Godfrey: Yes; there was over eighty per cent to sell the assets before the merger plan came out.

Mr. Gardner: Did they get a chance to withdraw?

Mr. Godfrey: None that I know of. I know of none that requested an opportunity 40

to withdraw. I want to say that at the meeting in April my requests for information were courteously met. Likewise, Mr. Brown, president of the company, has been most courteous to me.

10

Mr. Brown, president of the company, at the meeting in April, 1927, for the election of directors only, then informed me, as I recall it, that over eighty per cent had deposited their stock under the plan.

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Mr. Ward: We have now about ninety-five per cent of the preferred stockholders who have come in, and we have represented here practically one per cent of the stockholders and in the equity suit was represented less than one per cent and the other three per cent, the usual sleepers, are not necessarily opposed to the consolidation.

The Chairman: The compilation prepared by Mr. Stern was offered in evidence. Is there any objection?

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Mr. Ward: We object to the compilation as based upon an analysis of book values for the reasons indicated before, and not being the best evidence as to the market value of the stock.

The Chairman: We will receive it in evidence.

(Compilation entitled "Memorandum re Central Leather." marked Exhibit A-8.)

Mr. Godfrey: I offer in evidence "Plan for Readjustment of Share Capital, Central Leather Company, dated October 1, 1926."

(Marked Exhibit A-9.)

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Mr. Godfrey: I also offer in evidence "Agreement of Merger and Consolidation

between Central Leather Company and the United States Leather Company forming the United States Leather Company", dated May 19, 1927.

(Marked Exhibit A-10.)

Mr. Sleigh: I should like, if possible, to reserve the right to cross examine the witness until after Mr. Ward has examined him. It may be that at the close of Mr. Ward's cross examination I will not have any questions to ask. 10

Mr. Merritt: I came here absolutely unprepared today to participate in this matter for what I consider to be a very good and sufficient reason, which reason is well known to the other side, and I was going to request an adjournment of sufficient time so that I might prepare myself. The fact is I must stop with the preparation of this matter at this time. I do not believe I should state the nature of the reason why, unless I am called upon to do so. 20

Mr. Ward: We do not want Mr. Merritt to be forced on, if he is not prepared.

The Chairman: Then, we will arrange later for a day for Mr. Merritt to put his proof in. 30

Mr. Sleigh: I take it that same reservation applies to myself.

The Chairman: If you are not prepared to go on, certainly. Mr. Sleigh has requested whatever examination he desires to make be postponed until you complete your examination, Mr. Ward. Is there any objection to that?

Mr. Ward: No, sir. 40

Cross Examination by Mr. Ward:

Q. You say that you have an opinion as to the market value of the stock predicated on the ability of the company to earn full dividends on the old preferred stock? A. I think it was predicated upon
10 two things, and I think it might be predicated upon a third, and that is general market conditions.

Q. The general market conditions have been extraordinarily favorable and have been favorable for some time past, have they not? A. I think with respect to market conditions, the market conditions have been extremely favorable for those companies which are earning dividends and which seem to be prosperous and capable of earning more money in the future than they have been in the past.

20 Q. Of course, market conditions are not very favorable to companies which are not able to earn their preferred stock dividends by a steady margin are they? A. I think the other companies are preferred at the present time. I think the temper of the public is that companies which have been prosperous, have been on the upgrade and are expected to progress even more so in the future than they have in the past, are being favored to the exclusion
30 of other companies. I think likewise, for what it is worth, with respect to this situation, I think there is always a disinclination on the part of the public to buy into a lawsuit.

Q. Therefore, when a plan of readjustment is adopted which meets the favor of a large percentage of the stockholders and eliminates legal difficulties, the stock is likely, if anything, to appreciate in value, is it not? A. I think so.

40 Q. I think we are agreed, are we not, that prior to the consolidation the Central Leather Company

was legally unable to pay any preferred dividends until this deficit of more than eighteen millions was wiped out? A. I agree with that.

Q. And barring the possibility or impossibility of clearing that deficit through earnings within a few years, was it not necessary that some adjustment of the capitalization be undertaken in order to eliminate that deficit. A. Yes, sir; in my opinion. 10

Q. And that could be done only with the consent of two-thirds of the common stockholders of the company at that time? A. If you say so, I presume that is so.

Q. As a matter of fact, they had voting power, had they not, and there was a larger number of common shares outstanding than preferred stock outstanding, was there not? A. Yes, sir. 20

Q. As a matter of fact, if you are going to value preferred stock at par, should you not form such valuation not merely on the ability to earn the preferred stock requirements, but on the ability to earn a considerably reasonable margin over the preferred stock dividend requirements? A. I so stated—not only on the preferred stock but also a steady margin.

Q. How many years is it since this company has had a net corporate income equal to the dividend requirements of \$33,000,000 of seven per cent preferred stock? A. I would say offhand 1921 or 1922, but the record will show. Shall I look it up? 30

Q. Yes, if you please. A. 1921, based upon the company's published earnings.

Q. As a matter of fact, in 1921 did they earn money? A. Pardon me, I am wrong, or rather Standard Statistics. It was a deficit. The figure is \$11,000,000, but they have not got it marked as a deficit. 40

Q. That is deficit rather than income? A. Yes.

Q. How about 1920? A. 1920 was a deficit.

Q. How much? A. \$25,751,666.

By the Chairman:

10 Q. A deficit of \$25,000,000? A. Yes, sir.

By Mr. Ward:

Q. It is 1919, as a matter of fact? A. The records I have only go back as far as 1920.

Q. They do not show any year since 1920 that the company has earned its preferred stock dividend requirements? A. They do not.

20 Q. Have you compared the volume of the business of the company in recent years since the war with the volume of business prior to the war? A. No, sir.

Q. This company has large holdings of timber lands and bark lands, has it not? A. It was so stated in the reports, yes, sir.

30 Q. And in the natural or normal course of operation of this land by cutting the timber or stripping the bark, there would be a steady depreciation of the property account, would there not? A. There would.

40 Q. You stated that there was a showing in one of the reports that the proceeds of timber operations from 1923 to 1924, producing \$2,687,000 applied to reduction of bonded debt and was not reflected in the income account. Are you sure of that statement? A. I am sure of that statement for the reason that that amount is shown as a reserve in the balance sheet at the end of the year. Besides that, it is specifically stated in the report that it has been carried in that way.

Q. Well, in estimating the amount of the proceeds of the operations of timber properties, certain proportions should be deducted for depletion, should there not? A. Yes, sir.

Q. So that, in part at least, it was in the nature of the capital account? A. I am unable to answer that unless I know what amount has been deducted for depletion; in other words, the statements are not sufficiently explanatory with reference to that. I might make that clear by saying this, that in my opinion the amount received as income upon these bonds should have been reported as gross income and the amount that was properly deductible for depletion should have been deducted. 10

Q. Is that carried that way in all years? A. No; it was not figured that way in all years, as far as I can tell from the report. The report reads as follows: 20

“It will be recalled that, beginning with the year 1923, your company inaugurated a policy of annually setting aside a sum, taken principally from the proceeds of the timber operations, which fund has been used in the acquisition for the treasury of the company’s first mortgage 5% bonds. As a result of this policy, a total principal amount of bonds aggregating \$18,128,100 was acquired up to and including December 31, 1924. The interest on these bonds has been set aside in a ‘Special Depreciation Fund’ which aggregated a net amount of \$2,687,598.60, as of December 31, 1924.” 30

Now, this “Special Depreciation Fund” shows up on the balance sheet under the heading of “Reserves” upon the liability side, for that amount, at the close of 1924.

By Mr. Eckes:

Q. That is, the interest on the bonds purchased? 40
A. Interest on the bonds.

Q. Your opinion is that these transactions are so mingled that you cannot tell them? A. My opinion, based upon the annual reports and such information as is before me, is to the effect that this \$2,687,598.60 had never been included in the income.

10 Q. Is that entirely a wasted asset—that timber land? A. I do not think I am qualified to testify upon that. I think timber can be regrown over a period of years.

Mr. Ward: I do not know if I have much, if any, further cross examination with respect to the oral testimony of the witness, but he has introduced in evidence as a summary of his testimony a compilation of his work, a long and more or less technical exhibit. I think I should be given an opportunity to study that.

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The Chairman: I cannot see that there can be any objection to that. You certainly ought not to be expected to conduct a cross examination based on that compilation without an opportunity to examine and study it.

Re-direct Examination by Mr. Godfrey:

30 Q. Over the period for which they show a deficit, over that same period, had the company been actually writing off the books entire plants or placing them at a nominal value? A. The deficits which are shown in the Standard Statistics report are after deducting whatever expenditures had been made for repairs, replacements and maintenance and after deducting whatever amount had been charged off for depletion and after deducting such

40 amounts as had been charged off—in other words—

it represents a deficit after these deductions, some of which, while proper, are in the nature of book-keeping entries and not cash transactions.

Q. And not properly a deficit? A. I would not say that. I would say they did not represent cash expenditures.

Q. So that they represented the entire abandonment of plants, did they not? A. It would appear from the listing papers that amounts have been written off for abandoned plants which, during the years 1917 to 1922 inclusive, amount to approximately \$2,350,000; during the year 1923 to \$1,278,000; during the year 1924 to \$780,000 and during the year 1925, to \$2,840,000. 10

Q. Nearly eight millions, is that right? A. Over seven millions.

Q. Between seven and eight millions? A. Yes. 20

Q. Mr. Stern, you were asked the question on cross examination that the evidence shows that there had been reduction in the volume of business transacted which would reduce the gross assets during the period of the last three or four years as reflected by the reports. Does that same period not show that there has been any increase in the cash capital on hand and money out on call during that period? A. Of the three balance sheets which I have examined as of December 31, 1924, December 31, 1925 and December 31, 1926, the balance sheet of December 31, 1925, shows very little change compared with 1924, and December 31, 1926, shows a substantial increase. 30

Q. In what? A. In cash, call loans, Liberty bonds and bonds of the Central Leather Company which have been redeemed.

Mr. Gardner: Is it your opinion, Mr. Godfrey, that there is an earning power not reflected in the gross business? 40

Mr. Godfrey: No. My opinion is that they took more money out of their business and therefore did not have the gross sales reflected by the report.

10 Q. For the years 1925 and 1926, it shows that net profits increased those years, does it not, over each year—the net earnings increased? A. For 1924 there was a loss—\$34,306.65.

By Mr. Eckes:

Q. At what point? A. After interest on bonds.

By Mr. Godfrey:

20 Q. You may go on. A. For 1925 there was a profit of \$1,465,075.99. For 1926 there was a loss of \$534,909.58. For the three months ending March 31, 1927, there was a profit of \$568,475.27.

Q. Those are the earnings that reduced the gross sales? A. The gross sales for 1924 and for 1925 were approximately \$41,000,000 for each of those years, and for 1926, as stated by Mr. Ward, approximately \$37,000,000.

30 Mr. Eckes: Is there any information as to the gross sales during the first three months of 1927?

Mr. Brown: Sales for 1927 are running at least equal to 1926.

40 Q. The depreciation in timber land referred to by Mr. Ward in his statement that timber was out from the timber property and went to make up or assist in making up the assets or sales of this company,—they were taken care of and are reflected in the money set aside in the reserve for deprecia-

tion, are they not? A. The amount deducted by the company for depletion is reflected in a reduced value of property in its balance sheet at the end of each year.

Q. Not only are they reflected in the reduced value in the balance sheets at the end of each year, but also the money obtained from the sale of this timber land is reflected in the fact that this money was used for the purchase of these bonds outstanding in the hands of the public and liable against the company, were they not? A. Yes, sir. 10

Q. That was a double protection used by the company in reporting each year on the timber land, was it not? A. I would not necessarily say that. The depreciation was charged against the income of the company, and the cash that was received from the sales of the timber was invested either in whole or in part in bonds of the company. 20

By Mr. Ward:

Q. You gave us some figures from the listing papers a few moments ago, for several years, showing "Net reduction of plant account through depreciation and abandoned plants (not representing cash outlay)." Of course, depreciation is a normal operating charge, is it not? A. Yes, sir. May I say in explanation of this last answer that the reason I referred to these things, representing abandoned plants written off, is because the company refers to the fact that until January 1, 1926, no depreciation was figured on tanning properties. Therefore, these amounts from the information at hand, did not represent depreciation but did represent the abandoned plants written off. 30

I merely wish to state Mr. Ward, that in all of these statements I have made, I have endeavored 40

to make them as nearly accurate as possible, based upon the information I had to work upon.

10 Q. The successive abandonment of plants indicates to your mind, as an accountant, that the company is not able to make effective and profitable use of its full capacity? A. The writing off of an amount would indicate either that in the opinion of the company the plant was valueless or was not worth the amount that it had been previously carried on the books at, or it might indicate that the company desired to be conservative in its statement of its plant account.

20 Q. What does the actual abandonment of a plant mean as distinguished from a bookkeeping entry? A. I think the only way that can be answered is by giving facts. It might mean that the company had no use for the plant because of trade conditions, or it might mean that they were able to manufacture more efficiently at some other plant.

Q. I presume you are not informed as to what plants of the company may be idle at the present time? A. I don't know.

Q. Or whether any plants have been abandoned since December 31, 1926? A. No, sir.

30 Q. Does your analysis of the account show that the company sets up any inventory reserve apparently? A. Specifically with respect to inventory reserve, I do not know. The only thing I can say is that there does appear in the statements, a miscellaneous reserve item which, if I recall correctly, has not changed materially during the last three years; and that if there is a reserve set up with respect to inventory, it is either reflected in this reserve, miscellaneous reserve, or else is deducted from the inventory, not stated in the balance sheet, so as to show a net figure.

Mr. Ward: Mr. Chairman, it seems to us that we could probably be more effective in the end, if we took an adjournment now for a week to enable us to digest the testimony and figures that have been given.

The Chairman: Do you expect to put in any proof on your side before Mr. Merritt or Mr. Sleigh proceed with proof on behalf of their dissenters? 10

Mr. Ward: I have not any legal objection to doing that, although I think it would be more profitable, if they closed their case before we begin.

The Chairman: I should think so. Can you get ready next week, Mr. Sleigh?

Mr. Sleigh: We can make an effort.

Mr. Merritt: I do not believe I can be ready. I will not be able to take the matter up until the early part of next week, which means I really would have to put over preparation until that time. 20

Mr. Gardner: What stock do you represent?

Mr. Merritt: My client has 250 shares, and at this time I may say that since I came here today, I have authorization of Mr. Benjamin B. Avery, of Avery, Taussig & Fisk, attorneys representing another dissenting stockholder, George P. Upham, who was a competitor with my client A. Hicks Lawrence, to appear for him at this time. Mr. Upham is in the same predicament as I am and needs the same consideration as to adjournment, and as I would like to ask that he have the same arrangement that has been given to me as to time for proceeding with the submission of proof. 30 40

Mr. Sleigh: I would like to ask Mr. Stern one or two questions before we adjourn to give me some lead as to whether or not to proceed further.

By Mr. Sleigh:

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Q. In fixing your value, Mr. Stern, of the stock as you have testified to, in your opinion, how does the fact that a deduction of some several million dollars for unnecessary plant and equipment was made, affect your opinion? A. I would say that in view of the fact that an engineering concern had made an appraisal of the plants—an engineering concern which must have had the confidence of the management and likewise the confidence of the bankers—that in view of the fact that apparently the plant had been written down to such an amount as the engineering concern recommended; that the plant as now stated upon the books represents a sound and conservative valuation of the plant.

20

Q. Then, how does the fact that no depreciation was figured on the tanning property until 1926, at which time, as I understand your testimony, \$1,200,000 plus was written off for the year 1923; \$780,000 plus was written off for the year 1924; \$524,840 plus was written off for the year 1925; how does that affect your opinion as to the value of the stock; how does that help you fix a value? A. I can only reiterate what I have stated before and further state this, that prior to 1926 it appears that all maintenance, repairs and replacements had been charged against operation, that is, against income; that these various amounts which had been written off either by the company of its own accord or as a result of the recommendation of the engineers, may have indicated that prior to the

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writing off of these amounts the plant had been overstated upon the books, but that after these amounts had been written off, the value of the plant was correctly stated as a going concern.

Q. Then, you do fix your opinion of the value of that stock without really considering the value at which the plants were carried before they were written off? A. Yes. In other words, the values that I considered in discussing the value of the stock is the value of the plant after all these writing offs had been made. 10

Q. Now, then, you say in your testimony that from data which you have at hand or which you have been permitted to examine, you have formed your opinion of the value. Is there any other data that you know of at this time that you would like to have? A. Undoubtedly, Mr. Sleight, an examination of the books would lead to more information than is shown by the annual reports and by these listing papers. 20

Q. What books would you like to have to examine? A. And were the conditions such as to show that there was a narrower margin between book value and actual value; it might be necessary to examine the books; but if this case is to be determined, to any extent or if this case is to be determined upon the book value of the stock, it seems to me that a prima facie case can be established from the company's own reports without an examination of the books. 30

By Mr. Gardner.

Q. They amply support your conclusions—the figures you have amply support your conclusions?
A. Yes, sir.

Mr. Godfrey: I would like to have the company give me the benefit of the appraisers' report as of June 23, 1927.

Mr. Ward: We expect to do that.

10 The Witness: I think for the purpose of obtaining a fair value, that is, of the plant account where reductions were made on the recommendation of the engineers, which is expert opinion, it might be well to have the engineers' report in evidence.

Mr. Ward: We cannot agree to that. It is in five volumes and probably runs up to 1,500 pages. It is dated December 1924.

Mr. Brown: It is dated December 31, 1923 and it would not add anything at all.

20 Mr. Godfrey: Will you give me a statement of the plants of the company now in existence up to June 23, 1927?

Mr. Ward: Yes, sir.

Mr. Gardner: Until your own witness has been challenged as to the correctness of his conclusions, the figures and statements that he has produced, he says support his conclusions.

30 The Witness: May I say that in both the Standard Statistics report and in the listing papers there is a record of the various plants of the company and also of the stock which the company holds. The record of the plants of the company is shown in the listing papers on Page 5 and a list of the subsidiary companies is shown in Exhibit C on page 24, listing papers. A list of the plants is shown in Standard Statistics card, Exhibit A-6, on page 10, and a list of the subsidiary companies is contained upon pages 40 8 and 9 of this exhibit.

Mr. Sleigh: Mr. Ward, do you concede the fact that the Linwood Female College of Missouri is the holder of 500 shares of preferred stock of Central Leather Company?

Mr. Ward: Yes, actually. I think it appears in the name of the treasurer of the company.

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Mr. Gardner: The treasurer as treasurer?

Mr. Ward: Yes.

(At this point adjournment is taken to September 30, 1927, at 10:15 o'clock in the forenoon.)

CIRCUIT COURT OF HUDSON COUNTY.

20

In the Matter
of
The Application of Horace G.
Prall and others, stockholders
of Central Leather Company, a
corporation of New Jersey, dis-
senting from the merger and
consolidation of the said Cen-
tral Leather Company with the
United States Leather Com-
pany, a corporation of New
Jersey, for the appointment of
appraisers to appraise the full
market value of their stock.

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Met pursuant to adjournment, this 30th day of
September, 1927, at 10:15 o'clock in the forenoon.

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Present: The Commissioners; John Milton, Esq., Chairman, Hon. Walter P. Gardner and Peter A. Eckes, Esq.

Appearances as heretofore.

10 Mr. Ward: Have you any further testimony to present at this time, Mr. McDermott?

 Mr. McDermott: No.

 Mr. Ward: Do you wish to introduce any testimony, Mr. Merritt, at this time?

 Mr. Merritt: I would like to ask a few questions.

 Mr. Godfrey: I have no objection to counsel or anybody else interrogating my witness, but this matter has been worked out very, very carefully, and it has taken days to prepare this, to prepare the situation that we present, and it is a very difficult thing to interrogate an expert witness in a matter of which you have no prior knowledge at all, just from listening to the testimony that he has given. Do I understand that Mr. Merritt wishes to examine this witness for the purpose of producing testimony in support of his contention, or for the purpose of cross examining this witness in opposition?

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 Mr. McDermott: This particular witness is produced in the case of Prall and others, petitioners. For convenience, these matters are being consolidated in one hearing. I suppose, strictly speaking, Mr. Merritt would not have any more right to cross examine our witness than if the matter was heard separately.

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Mr. Merritt: This seems to be idle, because the question was whether I had any testimony to offer at this time. The question is not whether I wish to ask questions of Mr. Stern. Frankly, I haven't any questions of any kind that I wish to ask Mr. Stern. What I proposed to do was to ask Mr. Brown a question or two. It seems to me, if I confine myself to those questions, the objections made are beside the point entirely. 10

Mr. Ward: We will have Mr. Brown on the stand in a few minutes. Mr. Sleigh, have you any testimony to introduce on behalf of your client?

Mr. Sleigh: I take it the testimony already adduced is to be considered by the appraisers in fixing the value, not only of the block of stock represented by Mr. Godfrey, but also the stock which I represent. That being so, assuming that to be so, I have no questions to ask. 20

The Chairman: Is there any objection to that course on the part of the company?

Mr. Ward: There is not any objection on the part of the company.

Mr. Merritt: I would like to ask whether the same arrangement holds as to the other petitioners? Mr. Sleigh was perhaps a little particular to refer specially to his own client. My understanding at the last hearing was that the testimony would be offered in all the proceedings of all petitioners the same as though they were all consolidated in one proceeding. 30

Mr. Godfrey: I have no objection to that at all. The only point I want to make is that 40

10 if someone working on the same side is permitted to cross examine a witness on a subject on which he is not prepared, he may bring out facts that might confuse or might tend to confuse the appraisers. That was my objection. I have no objection to our proof going in for them as well as for ourselves.

Mr. McDermott: They can have the benefit of it.

Mr. Ward: The company is satisfied to have all testimony offered adverse to it, considered on behalf of all the petitioners.

20 I have no further examination of Mr. Stern at this moment, but there are one or two typographical errors in the transcript of his testimony that I would like to have cleared up at this time.

ALFRED J. STERN,—the witness heretofore sworn on the part of the petitioners, recalled and further examined as follows:

30 By Mr. Ward:

Q. On page 64 of the transcript, in the third line the answer reads as follows: "For 1924 there was a loss—\$34,306.65." Please refer to your tabulation and state the correct amount? A. The amount is \$484,306.65.

Q. And a few lines further down it reads: "For 1926 there was a loss of \$534,909.58." Will you please correct that? A. It should be a profit of \$534,090.58. The word "loss" should be "profit."

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HARRY WEISBURG,—sworn as a witness on the part of the respondents, testifies as follows:

Direct Examination by Mr. Ward:

Q. What is your address? A. 1348 East Twenty First street, Brooklyn, New York.

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Q. By whom are you employed? A. Kuhn, Loeb & Company.

Q. Bankers in New York City? A. Yes, sir.

Q. Have you examined the records of the New York Stock Exchange showing the prices at which preferred and common stock of the Central Leather Company have been sold on the Exchange over a certain period of time? A. I have.

Mr. Godfrey: I do not wish to be technical, but I want to say that there is no such thing as the records of the New York Stock Exchange. When the Secretary of the New York Stock Exchange is called and asked as to the official figures of the New York Stock Exchange he tells you: "We have no official figures." If you will change your question and call it "the record of prices of stock sold on the New York Exchange," I will be satisfied.

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Mr. Ward: I accept the amendment.

A. Yes.

Q. Have you also examined as to the number of shares of stock sold on the New York Exchange during the same period of time? A. I have.

Q. And have made a tabulation of the facts as to those prices and volume of trade? A. Yes, sir.

Q. The preferred stock and common stock of the Central Leather Company have been sold on the

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New York Stock Exchange for many years, have they not? A. Yes, sir.

Q. Does your tabulation show the high and low prices for both the common and preferred stock for certain years, also for certain months and weeks, also the volume of shares sold, both preferred and common? A. Yes.

Q. That covers a period for the years 1919 down to 1923 inclusive, and subsequently by months down to July, 1926, and then by weeks from that date down to July 1, 1927? A. Yes, sir.

Mr. Ward: I offer the tabulation in evidence.

(Marked Exhibit R-1.)

The Chairman: Does anybody desire to question Mr. Weisburg?

(No response.)

By Commissioner Gardner.

Q. Did you compare your figures with the Standard Statistics cards covering the same subject? A. No, sir; I did not.

By Mr. Ward:

Q. Have you ascertained from the Bankers Trust Company the amount of stock of the Central Leather Company deposited under the readjustment plan? A. Yes, sir; I have.

Q. What are the figures to date? A. September 28, 1927, preferred stock deposited 316,494 shares.

Q. That is what percentage of the total outstanding stock? A. 95 per cent.

Q. The common stock, how much deposited? A. \$356,597.08.

Q. What per cent of the outstanding common

stock? A. 89 per cent plus—slightly over 89 per cent.

Cross Examination by Mr. Godfrey:

Q. That is up to date? A. Up to September 28, 1927. Q. Can you tell us the amounts deposited, of preferred and common stock with the Bankers Trust Company on June 23, 1927? A. No, sir; I cannot. 10

Mr. Ward: Do you wish us to ascertain it and put it in?

Mr. Godfrey: Yes; I would like to know the amount deposited starting from the first day because it might show as to whether there was a free market for the stock or not or as to whether it was all tied up. 20

Mr. Ward: If you will permit me, I have a copy of an affidavit which was made in the Chancery proceedings by an employee of the Bankers Trust Company which shows the deposits for each month, beginning with October, 1926, down to the close of business July 19, 1927. May we not put that in evidence, in answer to your inquiry?

Mr. Godfrey: That part of it, yes. Will you give me a copy of it? 30

Mr. Ward: Yes.

Mr. Godfrey: You are only offering in evidence that portion of the affidavit which refers to the amount of deposits each month? Is that it?

Mr. Ward: I offer in evidence the first and second paragraphs and verification of an affidavit, which happens to be a duplicate original copy, made by E. E. Beach, 40

verified July 25, 1927, and filed in Chancery of New Jersey, in the suit brought by John E. Windhurst, complainant, against Central Leather Company and other defendants.

(Marked Exhibit R-2.)

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HIRAM BROWN, sworn as a witness on the part of the respondent, testifies as follows:

Direct Examination by Mr. Ward:

Q. You are president of the now existing United States Leather Company and were formerly president of the Central Leather Company? A. Yes, sir.

20

Q. When did you become president of the Central Leather Company? A. August 14, 1924.

Q. What prior executive experience had you had?

A. From 1902 to 1917 I was engaged in financing and operating companies, electric light and street railway and interurban railroad company property. During the war I was chief of the Finance Division of the Air Service, administering the financing of contracts on behalf of the army for the construction of airplanes, airplane motors and accessories.

30

After the war I became associated with Sanderson & Porter, industrial and public utility engineers. While with them I conducted for a client, Central Leather Company, a survey of the heavy leather industry and the condition of the Central Leather Company in particular.

Q. What, in general, is the business of the Central Leather Company? A. Tanning of heavy leather, including in that term sole leather, belting leather, harness leather and operating as subsidiaries, lumber property, glue properties, extract

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manufacturing plants also to a subsidiary upper leather tanning company.

Q. The Central Leather Company was the successor to the original United States Leather Company formed in 1893, was it not? A. Yes.

Q. There was a reorganization of the old United States Leather Company which was consummated about 1909? A. That is right. 10

Q. What was the approximate value of the leather business of the Central Leather Company prior to the World war? A. We have an exhibit, I believe, that gives that in dollars and cents. I understood you proposed to put it in evidence.

Q. How does the volume of the leather business of the Central Leather Company compare in recent years with its volume before the war? A. Materially reduced. 20

Q. Can you state the important reasons or factors for that reduction in volume? A. When the old United States Leather Company was formed in 1893, the merged company was then supposed to do a volume of business aggregating approximately 60 per cent of the total domestic volume of the heavy leather business in the United States. At the present time that volume is approximately cut in two, being about 30 per cent. There were several factors contributing to that decline. One was the fact that certain shoe manufacturers, whose business grew by leaps and bounds to a point where they could use all parts of a hide advantageously, went into the tanning business themselves. 30

Q. When? A. Some prior to 1900; others subsequent to that date; others recently. I think within the past ten years the greatest strides in increase of volume of production have been made.

Q. Name a few of the principal shoe manufacturers that began to tan? A. International Shoe 40

Company; Endicott, Johnson & Company; Brown Shoe Company; Hamilton-Brown Shoe Company; Keith. I think that comprises the total list.

10 Another factor which made inroads on the company's business was the belief on the part of the packers that it would be a measure of self protection to be in the tanning business, because they did not think it was healthy to have one customer for so large a portion of their products, so that today we have in the tanning business the Armour Leather Company, Wilson & Company and Swift & Company, the latter through their subsidiary the National Leather Company.

20 The third factor was the return to the business, after selling out to the merged company, of many independents, and, of course, the coming into the business of some new interests.

These three factors have tended to affect the company's volume of business.

30 Then, prior to the war, the company had a very substantial export business; I would say in excess of 121½ per cent of its volume. That figure is subject to correction. It may be slightly more, slightly less. That export business went principally to European countries who were buyers of our leather because we owned what was then the generally used tanning agent—bark,—and to transport bark to European countries for tanning leather involved such an expense that they could more economically buy the finished product from us. When the war came on these European countries, in view of the shortage of transportation facilities, found it necessary to erect their own tanneries, using all the hides available from the various corners of the world, including their own domestic supplies, and in addition there came into general use a tanning agent, as a substitute for bark, in the form of con-

40

centrated tanning extracts, principally Quebrachio extract from South America; that concentrated extract eliminated the pre-war disadvantage of transportation costs, so therefore, since the war, European countries have found themselves possessing tanning capacity, with no disadvantage in the acquisition of their raw hides or raw tanning materials and with cheaper labor than we have in this country, so that today they can manufacture their own leather requirements more economically by a few cents per pound than we can. Our export market to European countries has therefore been practically entirely eliminated, the only exception being offal, of which we have had a limited surplus and have been able to dump practically in European markets. 10

Q. How does the domestic consumption of heavy leather at the present time compare with pre-war years? A. About equal, in actual volume. I think the records show that in spite of the fact that there has been an increase in the population, there has not been a proportionate increase in the consumption of heavy leather. 20

Q. What condition arose during and immediately after the war with reference to leather stocks on hand? A. Leather tanning is a long process. It takes nine months from the time you buy hides until you get leather in form to sell it and collect for it—say seven months at least before you can get the hides to the tanner, tanned and finished and to sell the leather. It being a long process, tanners have to be forehanded in the purchasing of their raw material. The end of the war came somewhat unexpectedly, finding tanners producing leather at the rate that the war requirements seemed to demand and also the owners of a hide supply to continue production at that rate. Furthermore, there 30 40

was a general impression at the end of the war that the United States was going to be the supplier of raw materials and to some extent finished product for nearly all of the world, and for a period of time after the war terminated, tanners continued to operate their tanneries at the war time rates.

- 10 They were suddenly confronted with the realization of the fact that they had lost their export markets, that wartime requirements were larger than peace time requirements and that they had accumulated a surplus of leather, finished leather, equivalent to nearly three quarters of a year's supply measured by a year's domestic requirements.

- Q. What influence did that have on the price of the finished leather? A. It had the effect of creating what is commercially known as a buyer's
20 market wherein the buyer could go into our stores, our warehouses, or those of any of our competitors and see stocks of leather almost unlimited. He could be selective as to what kind of leather he wanted and could almost make his own prices, because many tanners were in a position of absolutely having to get money to meet not only operating expenses but their financial obligations.

- Q. How long did that overstock of leather influence the situation? A. From the time that the
30 recognition of the extent of the overstock became apparent, which was in April, 1920, when the stocks aggregated in finished leather, not counting the cut soles, about 10,500,000 sides until the early part of this year when the visible stocks on the same basis were reduced to approximately two and a half million sides.

Q. From whom do the leather tanners purchase hides? A. From packers and hide dealers.

- Q. Hides are a by-product of the packing industry, are they not? A. Yes, sir.
40

Q. Do hide prices fluctuate at times rapidly and somewhat violently? A. Yes, sir. Taking this year as an example, when it was realized that leather stocks were normal, in the early part of this year, and that a resumption of normal tanning operations ruling supply and demand could be undertaken, there was a general scramble for hides, not only in this country but in all European countries, resulting, in a period of four months, in an advance of better than 60 per cent in the price of hides. 10

Q. When you assumed the presidency of the Central Leather Company, how many tanneries did the company have? A. Fifty-one tanneries and fifteen extract works.

Q. When had they been acquired? A. That number and approximately as many more, at least as many more, had been acquired from the original organization of the company and following on over a period of twelve or fifteen years thereafter. 20

Q. The others that you speak of had been abandoned and sold prior thereto, had they? A. Yes; from time to time up to the time when I came with the company.

Q. Of the fifty-one tanneries when you became president how many were in operation? A. Only thirty were in operation.

Q. To what extent were these tanneries being operated? A. At a very low capacity. In fact, at one time as low as less than 25 per cent. 30

Q. What effect did that low operating rate have on the cost of production? A. It had the usual effect of increasing the costs very materially.

Q. What policy did the company then determine upon as to the use and operation of its tanneries? A. The company surveyed the volume of business that it was doing and assumed that it was good policy to maintain a reserve tanning capacity for 40

possible increase in that volume, and having reached that conclusion it selected tanneries with a capacity with a known operating efficiency adequate to supply that actual and prospective need, and scrapped the balance.

Q. Leaving? A. Leaving at the present time
10 twenty-five operating tanneries and four extract works.

Q. Have those twenty-five tanneries a capacity in excess of the present volume of business? A. They have a capacity in excess of the present volume of business of about 33 1-3 per cent.

Q. What was done with the others that were then abandoned? A. Scrapped.

Q. What was done with the equipment and plant in those tanneries? A. The usable equipment,
20 where it was either in a better condition or would represent a proper reserve stock was taken out and shipped to reserve tanneries where it could be used and kept to advantage and the rest of it stored at a central location for possible future use. Any not in that category were scrapped.

Q. And were sold as scrap? A. Sold as junk.

Q. Where were those tanneries, for the most part, situated, that were abandoned? A. Nearly
30 all the tanneries that the company owned were located originally with respect to the proximity of what was then considered an absolute necessity to tanning operation—a bark supply. They were, therefore, located in remote places in the woods.

Q. And not in flourishing industrial centers? A. Usually the tannery is the only industry in the community. The abandonment of the tannery has nearly in all cases meant the abandonment of the community.

Q. What was done then with the lands on which
40 these abandoned plants had been erected? A. Sold

for their acreage value. I know of sales at \$2 an acre; others as high as \$30 an acre; in rare instances, where it was cleared and close to farming lands, it might bring as high as \$50 to \$75 an acre.

Q. About what was the acreage of such a tanning plant? A. It varied. It is not necessary to have more than eight or ten or fifteen acres for a tanning plant, but many times the acreage would be from 75 to 100 acres. 10

Q. Then did the big write-down of September 30, 1925, on your books represent a scrapping of these abandoned plants? A. That write-down, plus the use of the special depreciation reserve that was referred to by Mr. Stern, represented that write-down.

Q. And any plant sold since that date, any further gain or loss on the sale as compared with the written-down plant is reflected in your profits or losses? A. If there had been any profits or losses, because that writeoff was the net loss, we credited the property account with the salvage, the estimated salvage before the writeoff and the actual salvage as approximately estimated. 20

Q. If you had not written down in 1925, then it would have been written off in the following year or years? A. Unquestionably.

Q. Did you write down your timber lands at the same time? A. The timber lands were left on the books at their values at which they had been on the books for some years. There were, however, some scattered timber holdings representing less than 10 per cent of the book values, in the south, in the States of North Carolina, West Virginia, Maryland, I believe, perhaps Virginia and Tennessee, that were sold because they had no further use, or, as a possible bark supply, they were located in such inaccessible places that the cutting 30 40

of the bark was too expensive compared with what we could buy it for, and they had no possible timber value for similar reasons.

Q. Was there a very active demand for lumber during 1925, and through at least parts of 1926, because of the high rate of building? A. There
10 was an active demand.

Q. What prices prevailed for lumber at that time? A. Declining prices. An active demand with declining prices.

Q. How did that come about? A. The source of my information is the prices that we have obtained in our operations in Pennsylvania and Wisconsin; a study of the Government reports and of the paper called Basing Point, put out by a Chicago house that is the recognized leader in the lumber
20 and timber trades.

Q. What happened in the lumber industry which affected the prices which you received? A. The concensus of opinion is that the desperate fight for territory that developed on the Pacific Coast between the Long-Bell people and the Weyerhausen interests resulted in a production of spruce and fir far beyond the consuming capacity of the country. The production was at low cost because of the volume and freight rates through the Isthmus were low, so that spruce and fir could be delivered on the Atlantic seaboard, particularly affecting our markets in Philadelphia and Baltimore and going into our markets at dollars per thousand feet lower than the prices we had realized in preceding years.
30

Furthermore, the same lumber could come across land to the middle western territory, having a similar effect on our Wisconsin production.

Q. Where are your presently held timber lands
40

generally located? A. Western Pennsylvania and North Central Wisconsin.

Q. Was there a very unprecedented drought in the year 1925? A. The South experienced in the year 1925 a very unprecedented drought, the statement being made in the lumber journals that it was possible to install portable sawmills farther into the swamps than at any previous time in a generation and as a result bring out pine and cypress and put it on the market that ordinarily does not reach the market. This timber production likewise came into our territory, particularly in Pennsylvania, and had an adverse effect on lumber operations. 10

Q. Was there some other factor, during 1926, that affected your timber lands? A. I have not the information at the moment, sir. 20

Q. Did any timber burn up during that year? A. We had a fire; yes, in western Pennsylvania, due also to the drought condition, that destroyed about 14,000,000 feet of cut-down timber ready to go to the saw mills, entailing a loss of approximately \$400,000.

Q. And not recovered through the proceeds of insurance policies? A. Some small percentage of it covered by insurance. I might correct that by saying that our insurance fund covered the loss that— 30

Q. (Interrupting) The company is a self-insurer, is it? A. The company is a self-insurer carrying a very large portion of its fire insurance.

Q. How does the volume of business by the company for the past six months of 1927 compare with the year 1926? A. I made the statement at our last meeting here that it was running about the same rate as 1926 volume, and upon checking it up I find that that statement is correct. 40

Q. Mr. Brown, prior to your connection with the Central Leather Company, did you have any experience as a leather man yourself? A. None whatever.

10 Q. Are you an engineer? A. Not a graduate engineer; no, sir.

Q. Your experience is along the lines of working with financiers? A. No, sir; my experience was along the line for fifteen years in a practical way; I bought, operated and constructed and directed large public utility operations, electric light plants, street railway companies, in part of the same territory where we now have tanneries.

20 Q. And you were brought in as president of the company because you represented a financial interest in the company? A. No, sir.

Q. Didn't you represent a stockholding interest in the company? A. No, sir. I was brought in, I think, because during the survey of the Central Leather Company's business I became acquainted with the officers and directors of the company who themselves suggested my taking the presidency. I think the first suggestion was made by Mr. George W. Childs, who was the then president, who was not in good health, well past the prime of life, and
30 both Mr. Childs and Mr. Hoyt, the chairman of the board died within a year or eighteen months after my assuming the presidency.

Q. Who is the vice president of the company? A. There are four.

Q. Give me their names? A. Mr. William L. Harkness, Mr. William McAdoo, Jr.—not any relation to the aspirant for the Democratic nomination—Mr. M. J. Beach and Mr. Arthur T. Lynch.

40 Q. Mr. Harkness is a lawyer, is he not? A. Yes, sir.

Q. He is there because of his legal ability? A. Mr. Harkness came with the company I believe twenty-four or twenty-five years ago.

Q. He is general counsel for the company? A. Yes, sir.

Q. And Mr. McAdoo? A. He has been with the company since the false Armistice Day in November, 1918. 10

Q. What was Mr. McAdoo's work? A. He was vice president in charge of sales.

Q. What was his previous business? A. In the leather business and only the leather business all his life, I believe, a tanner and seller of leather.

Q. And Mr. Beach? A. Mr. Beach was born and raised almost in a tannery and is the head of our tanning department, and considered the dean of American tanners since Mr. Child's death. 20

Q. How about Mr. Lynch? A. Mr. Lynch grew up with the Central Leather Company, office boy in the hide department, and is now vice president in charge of the purchase of hides and other tanning materials.

Q. Now, Mr. Brown, you stated a few minutes ago that there had been a loss of \$400,000 in connection with a fire of timber land or at least cut timber in Pennsylvania? A. Yes, sir.

Q. Do you know that the report shows only \$250,000? A. When I say \$400,000, that would be a valuation at about \$28 per M., which was the realization price per thousand if we sold the timber. We charged ourselves only with the stumpage cost, plus the cost of felling these logs and putting them on the ground, in order to minimize the slap that our earnings would get. 30

Q. In other words, you did not— A. (Interrupting) We did not take into consideration anticipated profits that we would have had. 40

Q. Now, Mr. Brown, referring to the conditions which you say made inroads into your business, did the company attempt to seek other fields for the disposal of their products, or did they limit their fields and continue to limit their fields to the markets which they had prior thereto sold to? A.

10 The company makes every effort to reach any market available for the consumption of heavy leather.

Q. That is not quite an answer to what I have asked you. You, prior to the condition of the market when there was an excess supply, were selling leather to markets that used them for belting purposes and shoe purposes; is that right? A. And harness.

Q. And harness? A. Yes, sir.

Q. After this supply increased to such an extent
20 that you did not have a market sufficient to take the supply, did you seek other markets than the three markets you just referred to? A. I think all tanners have sought all possible markets, but I know of none other. We are making efforts, along with other tanners, to go into the Far Eastern market. We have had representatives for over three years in China and Japan, because the same conditions that I have described in Europe have not applied in the Far East, to obtain a market for
30 sole leather.

Q. I do not mean that kind of a market. I mean a market that would give you a wider use of leather than the uses you mentioned in your answer? A. Develop other uses for leather?

Q. Yes. A. No. We have not been able to find any other use for leather than the ones that have prevailed for generations, and yet that effort has been made by tanners and by a research laboratory that tanners have endowed in connection with the
40 University of Cincinnati known as the "Tanners Research Laboratory."

Q. When you scrapped the plants that you just referred to, did you cancel the amount which you prior thereto had carried that plant on the books at? A. Yes, sir; written off the property account.

Q. Beg pardon? A. The value of the plant was written off the property account.

Q. So that scrapping is reflected in the report issued by you and by the company at the end of each year, to the full extent? A. No; it was not until the use of that special depreciation reserve to which Mr. Stern referred and the special write-off of September 30, 1925, at which time the abandoned plants up to that time were written off the books, and those two amounts take care of the write-down. 10

Q. That was done in 1925, you say? A. As of September 30, 1925. I think that is the right date. 20

Q. And yet 1925 shows a satisfactory profit, does it not? A. It showed a profit of \$1,465,000, if my recollection is correct, and in the report special reference is made to the fact that this write-down was a charge to surplus and did not affect current operations.

Q. In the year 1925, you have also testified to a condition wherein leather was very much cheaper and the markets to which heavy leather could be sold were very much less. That is right, is it not? A. I do not quite understand the question. Will you repeat it? 30

Q. You testified about 1925 to a very bad condition in the leather trade and timber trade and in the leather business; is that right? A. Yes, sir.

Q. You showed that your markets had been very much reduced by the general conditions subsequent to the World War? A. That is right.

Q. You also told us that there were numerous independent tanners who were making inroads into 40

your business? A. I did not say "who were." I said, who had over a period of years, and that was one of the influences accounting for the reduction in the percentage of volume which cut in two the percentage of volume.

10 Q. You also testified that the packers were going into the tannery business? A. Had gone into the tanning business.

Q. Because they did not want their by-product to depend upon one customer? A. I say that I think that was one of the motives which influenced them.

20 Q. Naturally the motive of making a little money influenced them, too, I assume? A. Possibly, although if you have observed the reorganization of the Armour Leather Company into J. K. Mooser Leather Company, and have followed the figures of the reorganization, you will note that Armour Leather has lost a great deal of money, and the same is true of National Leather.

Q. Is it also true that the Armour subsidiaries lost money in the latter years, is it not? A. I don't know. I only know of their leather business.

Q. Don't you know that the Standard Asphalt Company, an Armour subsidiary, has lost money? A. I do not.

30 Q. Yet, in spite of this condition which you have testified to in 1925, the Central Leather Company did make a substantial profit, did it not? A. It did. I told you \$1,465,000.

Q. This engineers' report that has been referred to here, on which was based the value of the different plants, that has been put in the yearly report, were they given to the company in writing in the form of five volumes? A. They were.

40 Q. Will you tell me the names of these engineers who made that report? A. Sanderson & Porter.

Q. That is the firm that you were formerly connected with? A. Yes.

Q. Now, the company does own a great many timber lands or quite a good deal of timber land in Wisconsin, does it not? A. And Pennsylvania; Wisconsin and Pennsylvania.

Q. Is it not a fact that its timber lands in Wisconsin have increased in value very materially? 10
A. No, sir.

Q. You do not carry them on your books at an increased value, do you? A. I think the present book values are very full for both the Pennsylvania and Wisconsin timber lands.

Q. I am talking merely about the Wisconsin timber lands, Mr. Brown. Has the value at which they have been carried on the books changed at all materially in the last five or six years? A. My recollection is that the values at which they are carried 20
on the books have not changed at all during the past five or six years, except, as we have cut, at the regular depletion.

Q. Is it not a fact that the timber lands in Wisconsin have increased in value materially and that all the timber lands in Wisconsin have increased materially in value in the last five or six years? A. The prices at which timber has been sold either in the cut form or in the form of logs, is lower than it 30
was for the previous three or four years.

Q. I am talking about the value of the timber lands? A. The only value that I know of is realization value. We cannot sell it in bulk. There is no customer.

Q. When you take off depreciation on timber properties, is that depreciation taken off the entire value of that portion of timber on the land that you remove? A. When we cut timber we credit our capital account with the stumpage. We completely 40

eliminate the cut-off section from the capital account. If, in cutting that stumpage into lumber or selling it as logs, we realize a profit, the profit goes into current earnings; if a loss, the loss is absorbed in current earnings.

10 Q. What I want to know is: When you remove the timber from a portion of the tract of land, you reduce pro rata the amount that you carry that tract on your books; is that correct? A. Not pro rata. We reduce it completely. Each tract is supposed to have a certain stumpage, according to our books, and we measure the timber cut from that tract; it is scaled in the woods; it is scaled in the mill; and based on that scaling, the property account is depleted at the stumpage rates.

20 Q. That is, at the amount you carry it on your books? A. Yes.

Q. Do you ever regrow or attempt to regrow timber on these tracts? A. It has not been done in past years because it has not been considered feasible to do it. This stripped land and the timber lands have to pay certain taxes, and the carrying cost in taxes is rather expensive when you consider that these taxes would have to be paid over a very long period of time before any growth would have a merchantable value. At the present time, we are
30 considering the feasibility, in cooperation with certain officials, of doing some reforestation work in return for an abatement of our taxes that would make it possible for us to do it.

Q. Now, Mr. Brown, up to 1925, you showed deductions for repairs and maintenance in your reports, did you not? A. We do.

Q. You will not have these deductions in the years from now on because of this abandonment of plants, will you? A. I can give you specific infor-

mation on that point. I checked it up. Your report covered what years?

Q. From 1922, on. A. The maintenance and repair items for 1922, 1923, 1924, 1925 and 1926 were as follows: \$1,845,900 for 1922; \$2,228,452, for 1923; \$1,365,656 for 1924; \$1,495,070 for 1925. Now, the drop occurs in 1926, \$845,307. I may say that that drop is very largely accounted for by the abandonment of surplus plants, the necessity for the maintenance and repairs of which no longer existed. 10

Q. Is there a corresponding drop in 1927, up to June 23? A. I would say, without having checked the figures, that there must be.

Q. Then, these heavy charges that were made prior to 1926, will not be recurring charges, will they? A. Normal maintenance repair charges will always be necessary. 20

Q. That is not what I asked you. The heavy charges caused by the upkeeping at 100 per cent. of these plants which have now been abandoned, will not be a recurring charge for 1927 or future years? A. We will have charges for maintenance and repairs for twenty-five tanneries and four extract works, equivalent, on a unit basis, to the similar charge for a greater number of plants in previous years. 30

Q. You still do not answer my question, Mr. Brown? A. We will not have \$1,500,000 of charges roughly, which prevailed in previous years for a greater number of plants than twenty-five.

Q. These charges were deducted from income, were they not? A. They were.

Q. That means a difference of \$600,000 reduction which had been reduced from income in previous years, will not be reduced because of the non-existence of those plants? A. The company is no 40

longer burdened by the maintenance and repair charges of abandoned plants.

By Mr. Eckes :

10 Q. And on the plants which are left, because they are the better plants I take it, the average rate of repairs will also be less than what it was on the abandoned plants? A. Not greatly less, Mr. Eckes, because we find over a long period of years that the average maintenance and repair item of tanneries, due to operations, is approximately six tenths of a cent per pound of leather produced, and that rate will probably continue to apply to operating tanneries.

20 Q. While I am asking you questions, I would like to ask you this as to the value or values set up on surviving properties as of December 30, 1925, in other words after this general scrapping program had been completed and the engineers had done their work, do those values represent appraisal values and do they, because of that, take into account either a write-up or a write-down as compared with book values of those plants? A. I think I can answer your question satisfactorily. It is roughly estimated that at present day costs of labor and material, it costs \$1,000 per hide of daily tanning capacity to build a tannery and equip it. For
30 example, a 300-hide capacity plant would cost \$300,000. The plants which the company owns are rather old, as already explained and are therefore subject to some property depreciation for age, even though maintained in 100 per cent. operating condition. After the write-down of September 30, 1925, the operating tanneries were left on the books at a figure of approximately \$650 per hide of daily
40 tanning capacity, but that valuation was a going

concern value, and the tannery only has a value if it can be operated at a profit. If the company's business does not warrant the production, or if the plant cannot be operated at a profit at \$650 per hide of daily tanning capacity, the value becomes a very nominal value.

Q. Yes, but the point I tried to make was 10
whether that value, which you now say was \$650
per daily hide capacity, was more or less than the
book value at which the plant had been theretofore
carried on the books? A. There was a reduction.

Q. There was a reduction? A. There was a re-
duction.

By Mr. Ward:

Q. A reduction to what amount? A. To the 20
amount that I have given Mr. Eckes.

By Mr. Eckes:

Q. So that prior to that time the value had been
higher than \$650 per hide of daily capacity? A.
Yes; our aim was to reduce the book value to a
point that we knew, from information we had, was
the basis that would not be a competitive burden in
fixed charge.

30

By Mr. Godfrey:

Q. So that it equalled an amount less than the
cost and depreciation, did it not? A. What is that?

Q. It equalled an amount less than the full de-
preciation up to that time, did it not? A. Depre-
ciated to a going concern value for the remaining
plants.

Q. Do you mean a paying operation value? A.
A going concern value is the term used.

40

Q. That means a plant operating value? A. Yes.

Q. It is less than the replacement amount, less depreciation, in other words, the book value which you had? A. I would say that it is not less than the replacement cost with a normal depreciation, when you consider that some of these tanneries are
10 over fifty years of age and all of them are over thirty years of age, so that when you leave them on the books at 63 per cent. of their replacement value due to this cost of labor and material, I doubt that you get them at too low depreciated value.

By Mr. Eckes:

Q. That raises the question as to whether the advance in the art during the years have been such that a plant erected at the present time would be
20 much superior to a plant that you are speaking of? A. A plant in existence today owned by Mr. ——— I will get his name in a moment, I know him well, I have been in his place—that is supposed to be the last word in tannery construction. It has automatic conveying apparatus; it is steel and brick construction. All labor and handling has been eliminated as much as possible. It is far superior to any existing tanning plant that I know of, either of ours or of any of our other competitors—the
30 name is Eberle—Joe Eberle—but the method of making leather, tanning leather, is essentially the same today as it was hundreds of years ago, so that these refinements have done nothing but add to the cost; and we believe—in fact we are almost certain that Mr. Eberle's production costs are greater today than our costs with our frame buildings, with labor of the character that we employ.

By Mr. Godfrey:

Q. The main cost of a tannery is the machinery,
40 is it not? A. No, sir. I would say that much of the

cost is in the digging of the vats in the ground, the building of them, the erection of the building, the boiler plant, the boiler and heating plant.

Q. Well, the boiler and heating plant is part of the machinery, is it not? A. The plant itself, except for the boilers, is structure.

Q. The frame building was never considered a very great asset on the books of the Central Leather Company, was it? A. It was on there at cost. 10

Q. Was anything ever taken off for depreciation from the cost of erecting the frame buildings? A. Not any depreciation until this write-off—just these two funds that I spoke of.

Q. That is right, is it not, there was never any depreciation taken off the value of the frame buildings? A. It was taken off, all depreciation in one sweep. 20

By Mr. Eckes:

Q. Do I understand that it has been the policy of the company for years not to write off depreciation? A. They had never a depreciation item on their books.

Q. So that depreciation taken in these years under review represented not merely depreciation for those years but for a long period prior thereto? A. All previous years. 30

Q. So that the losses of those years were not merely the normal losses, but were to some extent made greater by reason of the deferred depreciation of prior years? A. To the extent that the deferred depreciation applied to existing plants that we continued to operate. Of course, for the abandoned plants that would not be true.

Q. This writeoff occurred in only the one year—1925? A. No, because they used in previous years, 40

as this exhibit will show, back over a period of several years used part of that special depreciation fund and only used the balance of it in 1925.

Q. These adjustments do not appear in the net earnings as reported, do they? A. Net earnings were not involved in either of these funds. The
10 special depreciation reserve was credited directly to the reserve and the write-off of September 30, 1925, was charged directly to surplus. Neither was cleared through earnings.

Mr. Ward: I offer in evidence exhibit compiled by the comptroller of the company showing the net earnings, bond interest, the net earnings after bond interest, bond discount, preferred dividends paid, common
20 dividends paid, the total dividends paid, total of bond interest, bond discount surplus adjustments and the resultant surplus of the company from 1893 down to and including June 22, 1927.

(Marked Exhibit R-3.)

Mr. Ward: I offer in evidence the consolidated balance sheet of the Central Leather Company as of June 22, 1927.

(Marked Exhibit R-4.)

Mr. Ward: I offer in evidence a tabulation of data for the years 1910 down to June
30 22, 1927, showing the sales of leather materials, glue, grease tankage and the volume of business in dollars.

(Marked Exhibit R-5.)

Mr. Ward: I offer in evidence a history and analysis of the special depreciation reserve, which is a sum derived from the proceeds of timber lands as to which Mr. Stern testified.

40 (Marked Exhibit R-6.)

By Mr. Godfrey:

Q. The Central Leather Company merged and consolidated with the United States Leather Company? A. You are speaking of the last merger here?

Q. June, 1927? A. Yes.

10

Q. How many shares of stock of the new company were issued to the United States Leather Company that was merged with the Central Leather Company? A. Whatever the plan shows. I think it was share for share, was it not?

Q. That was \$100,000 worth of stock? A. Share for share, whatever that was.

Q. You were the president of the company during that time? A. Yes, but I do not know whether it was \$100,000. Yes; it was \$100,000. That's right; yes, sir. A thousand shares at \$100.

20

By Mr. Ward:

Q. A thousand shares of which stock. A. That was the common stock.

By Mr. Godfrey:

Q. There was only one class of stock in the United States Leather Company? A. Yes; but it got share for share.

30

Q. Share for share in the new company? A. Yes; the old company had 1,000 shares at \$100 each.

Q. Now, what was the United States Leather Company that was in existence prior to the merger and consolidation? A. It owned some property and it owned physical assets in the shape of inventories.

40

Q. It was not a going concern, was it; it was not operating? A. Yes, sir; it is the company through which all the sales, practically, of Central Leather Company were made.

Q. In other words, it was the selling agent for the Central Leather Company? A. It was the selling company of the Central Leather Company.

Q. And the stock of the United States Leather Company was owned by the Central Leather Company? A. Yes.

Q. And when you issued \$100,000 of common stock, share for share, to the selling agent of the United States Leather Company, you merely put it back again into the treasury of the new consolidated company, did you not? A. That would be the procedure.

20 Q. Was there presented to the board of directors of the Central Leather Company a statement of the assets and liabilities and inventories of the United States Leather Company, at which to appraise it? A. The directors of the Central Leather Company had full knowledge of the assets and liabilities of the selling company.

Q. That is not what I asked you. A. They were constantly seeing the statements of assets and liabilities so they were familiar with them.

30 Q. Was there present at the meeting of the board of directors of the Central Leather Company which voted upon the decision to issue common stock to the United States Leather Company, a statement of assets and liabilities and inventory of its net worth and values? A. I would say that these statements—because when we held meetings we always had the statements available—were available at that meeting and if not looked at at the meeting by the board, had been there and the board was in a position to inform itself of what these statements were.

40

Q. Have you got these statements? A. The office records have them.

Q. Will you produce at the next hearing these records, statements, inventories and valuations which were considered at the May meeting of the board of directors of the Central Leather Company which voted upon this merger and consolidation plan and accepted the valuation of the United States Leather Company to the extent of issuing or deciding to issue share for share of common stock for each share outstanding of the capital stock of the United States Leather Company? A. I will be guided by advice as to whether or not that information should be presented. 10

Mr. Ward: Would it serve your purpose, Mr. Godfrey, if the balance sheet of the United States Leather Company is produced? 20

Mr. Godfrey: It might, but it would not give the inventory values.

Q. It was at the May meeting, was it, of the board of directors of the Central Leather Company that they voted upon this merger and consolidation? A. I do not recall the date. The date can be supplied. There was a meeting at which this merger was approved, but the date I do not recall. 30

Q. It was subsequent to the stockholders meeting in April? A. It was.

Q. At which you elected directors and at which I was present? A. Yes.

Q. And at this meeting in May, I believe, in May 1927, at which the board of directors decided upon this merger and consolidation, there were certain figures, were there not, before them of the condition and valuation of the Central Leather Company for the purpose of putting it into this merger and 40

consolidation? A. The whole merger plan had been the subject of discussion and figuring for a period of months and months. There was not a director who was not thoroughly familiar with all the assets and liabilities and values et cetera of both companies.

10 Q. Mr. Brown, when you passed upon the question of the merger and consolidation in the May meeting, 1927, you took into consideration the valuation of the properties and the earning power then of the Central Leather Company, as well as the United States Leather Company as a basis for merger and consolidated corporation? A. That was an element. The earning power of the combined companies was an element of consideration in the whole scheme.

20 Q. I did not ask you that. I asked you if, when you decided to vote upon the number of shares you would issue to the stockholders of the Central Leather Company in the new company, you took into consideration the then valuation of the properties, assets and the earning power of the Central Leather Company at that time? A. Yes, sir; I can answer that, yes.

30 Q. You do not want us to understand, do you, that you decided to issue stock in a new company for a possibility of the future earning power? A. I do not know whether I want you to draw that understanding from it or not. Companies are financed in anticipation of future earnings.

Q. That is called watered stock, is it not? A. Yes.

Q. Do you want us to understand that the stock of the merged and consolidated company is watered stock? A. I wouldn't say that. It is a reduction in the capital stock.

40 Q. It is not an increase; it is a reduction? A. It is a reduction in the capital stock.

Q. Therefore, when you decided to issue stock to the organized company and to capitalize that company, to be the treasury of the assets of the United States Leather Company and the Central Leather Company, you took it, did you not, at the value of the property at that time or less than the value of the property at that time? A. The question of the value at which the new company's properties is taken is not a part of this investigation, if I understand you correctly. I do not understand that question. 10

Q. (Question repeated by stenographer) Therefore, when you decided to issue stock to the organized company and to capitalize that company, to be the treasury of the assets of the United States Leather Company, you took it did you not, at the value of the property at that time or less than the value of the property at that time? A. I think that the values of the Central Leather Company as shown by that balance sheet which has been produced in evidence were considered in relation to the capitalization of the new company. 20

Q. Well, that was the consideration that you are talking about. You say it was taken into consideration. Did you put them into the new company at their then basic value or did you put them in at less than value, or did you put them into the new company at more than their value, as you thought them to be worth as president and director of the company? A. You have there in evidence a consolidated balance sheet of the Central Leather Company which included in that consolidation the assets and liabilities of its selling company, the United States Leather Company, and these values were the bases of the reorganization. 30

Q. You still do not quite answer my question. Your business, before you came into the Central 40

Leather Company, was that of an efficiency expert, was it not? A. No, sir; I never was.

Q. Were you not an efficiency expert? A. No, sir.

10 Q. Now, Mr. Brown, when you decided on a merger and consolidation in May, 1927, and the merging and consolidating of these two companies and the turning in of the assets of these two companies, together with their liabilities, into the merged and consolidated company, you decided that you ought to issue stock of the new company for the value of the plants of the companies, their entire worth, at the time of the merger and consolidation, did you not? A. Yes, sir.

20 Q. And also whatever the value of the United States Leather Company was, which you say had considerable value I believe, in June, 1927, it was owned entirely—this very valuable company—was owned entirely by the Central Leather Company, was it not? A. It was.

30 Q. You also say that in organizing the new company, you were ultra conservative or more conservative than perhaps the books might show the condition of your company to be by reducing the stock valuation instead of leaving it at its old stock valuation? A. There was less stock of the merged company because of the no par value feature of the common stock, than there was of the two merging companies.

Q. Did you take any of the assets of the Central Leather Company at a figure, into the merged corporation? A. There was no figured per share amount.

40 Q. Now, you issued shares of stock, I believe you informed us, to the United States Leather Company for its assets that went into the merged company? A. For its stock; for its net worth repre-

sented by its stock. We assumed its liabilities as well as taking assets, and gave it stock for its capital stock.

Q. You issued to the United States Leather Company share for share of the common stock of the merged corporation, for the outstanding stock of the United States Leather Company; is that right? A. That is my understanding of the legal procedure. This is a technical, legal question that I may not be answering correctly. 10

Q. That is what was done? A. I think it was.

Q. As president of the company, it was incumbent on you to know what stock of the new company which you, as president, were to issue for the outstanding stock of the old company, was it not? A. I have told you that it was share for share. If you frame your question in a legal way, when I am not a lawyer, I want it clearly understood. 20

Q. Does your recollection tell you that on June 22, 1927, the United States Leather Company, who had then a capital stock of \$100,000 issued and outstanding, had a deficit of \$11,417,564.87? A. I would like to make this explanation—

Q. Will you please answer my question? A. If that shows it, then I confirm the statement that this balance sheet shows that figure.

Q. Do you want us to understand that you issued 1000 shares of the new merged corporation to a company that had a deficit of \$11,417,564.87 and was hopelessly insolvent? A. I did not say it was hopelessly insolvent. We issued 1000 shares of no par value stock for par value stock of that company and put it right back in the treasury of the company; it lost nothing; it gained nothing. 30

Q. So it was merely a bookkeeping entry, was it not? A. It was the legal way.

Q. It is not the legal way. It is the accountant's 40

way of talking about it. It was a bookkeeping entry, was it not? A. Let us say that it was, to see where you are leading.

Q. And do I understand now that the merged company is its own selling agent? A. No, sir; the merged company has formed another subsidiary,
10 the U. S. Leather Selling Corporation, which has taken over the functions formerly performed by this subsidiary.

Q. Now, did your board of directors have before them the assets and liabilities, or the general knowledge of the assets and liabilities of the Central Leather Company as of June 22, 1927, at the time they voted upon this merger and consolidation? A. If that was the time when they voted on the merger—

20 Q. In May. A. Whatever the date of the vote was, the board, as I have stated before, was fully informed as to the assets and liabilities and earning capacity of both the merging companies.

Q. The agreement of merger and consolidation was dated May 19, 1927. You signed that agreement, did you not? A. I did.

Q. And that was about the date of the meeting or just prior to the date of the meeting of the Board of Directors of the Central Leather Com-
30 pany? A. I assume so. I did not keep the date in mind, but I assume it was the date.

Q. When you issued these shares to the public, or intended to issue them to the public, didn't you intend to hold out to the public that the capitalization of the new company was to be the value of the Central Leather Company plus the value of the United States Company? A. When those shares were issued, they were issued to the original share holders who had been defrauded of nothing and
40 who had been given nothing.

Q. In that statement I disagree with you, but that is not an answer to my question. A. There was no misleading statement of any kind put out in this—

Q. (Interrupting) I am not charging you with anything of that kind. This is merely a question of values. I will have the question repeated (previous question repeated by stenographer as follows): "When you issued these shares to the public or intended to issue them to the public, didn't you intend to hold out to the public that the capitalization of the new company was to be the value of the Central Leather Company plus the value of the United States Company." I think you can answer that question. A. I think yes, I would say: yes; I would say so. 10

Mr. Godfrey: Mr. Ward, is there any objection to this paper which you have shown to us going in evidence? 20

Mr. Ward: No, sir.

Mr. Godfrey: I want to say that I have been handed three or four lengthy papers, containing many figures. I stand in the same position that Mr. Ward stood in the other day when he said that we had put in figures and statements by an expert which required time for study to enable him to make a proper examination of the witness. I find myself in the same position as to these exhibits placed in evidence by Mr. Ward, and I would like to have an opportunity to be able to study them before closing my examination of Mr. Brown. 30

The Chairman: Is there any objection to that course?

Mr. Ward: None whatever. 40

The Chairman: You have a paper to offer in evidence, Mr. Ward?

Mr. Ward: I offer in evidence balance sheet of the old United States Leather Company as of September 30, 1926; May 31, 1927, and June 22, 1927.

10 (Marked Exhibit R-7.)

The Chairman: That closes your examination, Mr. Godfrey, subject to resuming it if you wish to do so after you have studied the exhibits?

Mr. Godfrey: Yes, sir.

Mr. Merritt: At the last hearing I stated that I was authorized to make an appearance on behalf of Mr. Benjamin A. Avery, who was attorney for George P. Upham.
20 Mr. Avery is here today.

I have a few questions that I would like to ask Mr. Brown.

By Mr. Merritt:

Q. Mr. Brown, referring to the item of inventory set forth in the consolidated balance sheet dated December 31, 1925, contained in Exhibit A-2, reading as follows:

30

"Inventories:

Leather in Stores, Lumber and other Finished Products	\$11,482,805.21
Hides and Leather, Raw and in Process, Bark, Extract and all other Materials ..	17,682,026.58"

Can you say whether those values are given at
40 cost or market price, whichever was the lower?

A. I think this was at cost or market, whichever is lower.

Q. Referring to the same item, that is the item of inventory in the consolidated balance sheet dated December 31, 1926, contained in Exhibit A-1, are the values given in connection with that item, given at cost or market value, whichever of the two was the lower? A. Yes, sir. 10

Q. Referring to the item of "Reserves, Miscellaneous, \$829,323.58" on the liability side of the consolidated balance sheet as of December 31, 1926, please state whether there is any relation or connection between that item and the item of inventory on the assets side of the same consolidated balance sheet? A. If there is, it is because of a small amount, because "Reserves, Miscellaneous" included other reserves that the company set up. If there is any reserve for inventory, it would be obviously small. 20

Q. Would you look at page 9 of Exhibit A-1, at the last item in that part which is entitled: "Balance of Property Account," the amount of which is \$9,361,177.14. Can you say how much of that amount represented the first item mentioned of "Balance of Property Account, including bark and timber lands, comprising 339,008 acres of land in fee?" A. What do you mean—how much of the \$9,361,177.12 is bark and timber lands alone? 30

Q. Yes. It reads "339,008 acres of land owned in fee." A. I do not carry the figure in my mind, but it is a very large portion of it. Only a small percentage of that amount would be the chestnut wood for extract purposes, pulp wood, railroad ties, cedar posts and poles and other forest products—a small percentage.

Q. Do I understand that the principal part of the \$9,361,177.14 represents the 339,008 acres of 40

land owned in fee? A. Yes, sir; it represents the land as well as the growing, sawing timber, the stumpage rate at which it is shown on the books of the company.

- 10 Q. Well, if you ignore all the other items contained in this, in other words, if you used this 991,921,429 feet of growing, sawing timber, that would be at the rate of less than one per cent. per foot, would it not, for that timber? A. Well, the way you carry stumpage on the books of the company is at so many dollars per thousand feet of stumpage. If you divide 991,921,000 into 9,000,000, don't you get about nine or ten dollars per M stumpage for hard wood and hemlock, and that is about the figure I had in mind as the average rate at which we carry our stumpage or standing timber, because our acreage, our 339,008 acres of land, after it is stripped, will have a sale value on the average of \$2.00, maybe more, after it is stripped. While the stumpage is on it, it is included in the stumpage.

The Chairman: Have you any questions, Mr. Avery?

Mr. Avery: No questions.

- 30 The Chairman: Have you any questions, Mr. Sleight?

Mr. Sleight: No questions.

By Mr. Godfrey:

- 40 Q. It was stated here the other day by someone that when you paid out the dividend in June, 1927, of the new company, and paid out the \$5, it was either paid out of profits made from January 1 up to the time of the declaration of the dividend in June, or paid out of surplus; is that correct? A.

Well, the agreement of reorganization stated that the prior preference stock would be cumulative.

Q. That is not what I am asking you? A. Well, I did not make the statement that you just repeated, and I wanted to make what was the correct statement. To answer your question, I will say no. If you want the correct statement, I will make it. 10

Q. Go ahead. A. The reorganization plan stated that the prior preference stock would be cumulative from July 1, 1926. The earnings from July 1, 1926, to June 23, 1927, were several hundred thousand dollars in excess of the \$1,165,000 necessary to pay the dividends for the year ending June 30, 1927, so that in paying the dividend of \$7 per share on the new prior preference stock, the company, if you interpret "company" to mean the two merging companies, had more earnings than its requirements. 20

Q. That was paid out of profits, then? A. Out of surplus.

Q. Or profits—which? A. The profits were included in surplus, the profits having been derived in that period.

Q. And the \$5 that was paid, was that paid out of profits? A. No, sir. The \$5 was taken out of cash, a direct charge to surplus. 30

Q. Were the earnings sufficient to pay the \$5 as well as the dividend? A. The \$5 per share would be \$1,650,000. No; the earnings for that period were not sufficient to pay both the \$7 dividend and the \$5.

Q. So that the \$5 was paid out of surplus? A. No, sir.

By Mr. Ward:

Q. That \$7 is equivalent to $3\frac{1}{2}\%$ per share of 40

the old Central Leather Company? A. Yes, sir; there was one-half share issued for each full share.

By Mr. Godfrey:

10 Q. Have you the maintenance and repairs item for 1927 from January 1, to June 23? A. I can furnish it.

Q. You will give it to us? A. Yes.

Q. Will you give us the balance sheet as of June 23, 1927? A. You have it.

Q. Now, I also want to know something else: You show here in the 1926 report: "Less expenses and losses of all companies, \$2,512,346.06"? A. Yes, sir.

Q. On page 14? A. Yes, sir.

20 Q. Will you kindly tell us generally how that is made up? A. Yes, sir. The preceding line states: "The total earnings of all properties after deducting expenses incident to operation, including those for repairs and maintenance, depreciation and taxes amounted to—" In other words, they are the earnings after all direct operating charges, including maintenance, depreciation and taxes had been met. Then the next deduction is for the administrative, selling and general expense. The
30 phraseology used there is the form supplied to us by Price, Waterhouse & Company. The word "losses" is more or less a misnomer, but they insist on its use in the form which they submit. It is actually administrative, selling and general expense other than direct operating expense. It is a consolidated account.

Q. In the year 1925 it exceeds the figures of the year 1926, does it not? A. It shows that it does; yes, sir.

40 Q. Will you tell me the occasion of that excess

in the year 1925, or deduction for the year 1926?

A. Well, there had been a policy of rigid economy inaugurated in the Central Leather Company's operations. All charges of every kind that we could possibly eliminate had been eliminated, and that item of administrative, selling and general expense, has shown a steady decline in the past four years. I have not analyzed the differences. It could be done. Whether it is desirable to give publicity to everything that we have done to reduce expenses, I do not know, but that is the general explanation of it.

10

Q. For the year 1927 and future years, it can then be expected that the figure of two million, five hundred and odd thousand dollars, representing the normal administrative expenses, instead of being that figure, will be considerably less? A. You cannot fix the figure, for this reason: Administrative, selling and general expense is always affected by the volume. If we have the same volume of business as in 1926, it would be no higher. If there were a greater or lesser volume, it would fluctuate.

20

By Mr. Ward:

Q. The volume in 1926 was less than in 1925, was it not? A. Yes.

30

By Mr. Godfrey:

Q. About ten per cent less? A. The volume?

Q. Yes. A. You have the figures on the exhibit there. Whatever the percentage indicates.

Q. Well, the administrative expenses were reduced almost a third, were they not? A. Whatever the percentage is between—

Q. That reduction is greater than ten per cent,

40

is it not? A. Yes, explained, as I have said, by a policy of rigid economy.

Q. Could it also be explained by the fact that having shut down a number of plants and scrapped them, the administrative expenses would be reduced? A. Yes.

10 Q. And therefore that reduction would continue in future years? A. Yes.

Q. It would also be reflected in the 1927 figure for that item? A. Yes, sir; a permanent improvement.

Q. It is a permanent improvement? A. Yes, sir.

By Mr. Eckes:

Q. In that expression, "Less expenses and losses of all companies," what is meant by "all companies"? Are those the operating companies or
20 subsidiaries? A. All subsidiaries. For taxing reasons we have to operate through a number of subsidiaries. This is a consolidated system, a consolidated statement of all companies with inter-company charges eliminated.

Q. Is the capital stock of these companies all owned or was it all owned by the old Central Leather Company? A. In the one case referred to
30 it is completely owned. There are two or three little hide buying companies down in the southwest, in Texas, where our ownership is less than 100 per cent.

By Mr. Godrey:

Q. Referring to Exhibit R-4, you have an item on there: "Other investments, \$6,262,907.53." Do those other investments represent interest in subsidiaries or do they represent interest in actual stock investment in some other corporation? A.
40 Actual stock investment in two companies. One is

the Greiss-Pfleger Tanning Company. We own about 61 plus per cent of the capital stock of that company, which is engaged in the business of upper leather manufacturing; and the income from that investment is included in income from investments, in that line below. The other investment in that \$6,000,000 item is "Tanners Products Company," of which we own approximately 25 per cent. That Tanners Products Company is more or less co-operatively owned by all tanners, on the theory that their stock ownership represents the approximate proportion of the hair, which is a refuse material, contributed to that company, which it in turn manufactures into insulating materials and the like. The company was originally formed to get the best recovery value possible out of the hair by-product of tanning. We continue to own that stock. The income from that is also included in this income item. 10 20

Q. Are there any other securities or stock included in that item under "other investments"? A. Yes, but they are inconsiderable in amount. There are probably ten or twelve items included in that. There is a real estate development proposition in connection with our tannery home sites. As of this date we own the capital stock of 50 per cent of it. Also a cut sole plant operating in Lynn, Massachusetts. The amount in dollars and cents included there was \$595,792 of that item. 30

Q. The values which you have placed here, are they obtained from the book values of the companies themselves or less than the book values, or stock quotation values? A. There are no stock quotation values on any except the Tanners Products, in which our investment is roughly—that stock is about par—\$470,000. That is based upon the actual market value. 40

Q. You mean the stock market value? A. Not a stock market.

Q. An outside market? A. An outside market. It is not listed. It is a small company. The Greiss Pfleger is based upon cost to us, and it has not been a profitable operation. It has not returned a satisfactory return on the amount at which we carry it on our books. It is carried at nearly \$5,000,000 in that item and the income is \$200,000 in this \$231,000.

Q. Then, this stock that you say cost you \$5,000,000, returns \$250,000? A. \$200,000.

Q. \$200,000 on an investment of \$5,000,000,—does that represent its entire earnings or do part of its earnings remain in the treasury? A. It has earned for the past two or three years an average of not materially in excess of \$250,000. When they declared their dividends, it has once or twice gone into surplus. The upper leather business has been in the doldrums, just as much as the heavy leather business. That company is rich in assets but weak in earning capacity.

Q. And being rich in assets but weak in earning capacity, you still feel that the value at which you carry it on the books, is the correct value of the assets of the company? A. I have said it was the cost to us.

Q. But do you believe it to be about approximately the value of your proportionate share of the properties of the company? A. It has assets fully equivalent to that.

(At this point adjournment is taken to Friday, October 14, 1927, at 10:15 A. M.)

CIRCUIT COURT OF HUDSON COUNTY.

In the Matter

of

The Application of HORACE G. PRALL and others, stockholders of CENTRAL LEATHER COMPANY, a corporation of New Jersey, dissenting from the merger and consolidation of the said CENTRAL LEATHER COMPANY, with the UNITED STATES LEATHER COMPANY, a corporation of New Jersey, for the appointment of appraisers to appraise the full market value of their stock.

10

20

Transcript of shorthand notes of testimony taken on the hearing in the above stated matter, this 14th day of October, 1927, at 10:15 o'clock in the forenoon, at the office of the New Jersey Title Guarantee & Trust Company, No. 83 Montgomery Street, Jersey City, New Jersey, before John Milton, Esq., Hon. Walter P. Gardner, and Peter A. Eckes, Esq., the Appraisers heretofore appointed in above matter.

30

Appearances as heretofore.

HIRAM BROWN, a witness heretofore sworn on the part of the respondent, called and further examined as follows:

By Mr. Ward:

40

Mr. Ward: At the end of page 81 of the transcript it reads:

"Mr. Ward: I offer in evidence the second paragraph and verification of an affidavit, which happens to be a duplicate," etc.

I intended to offer the first and second paragraphs. The first paragraph is introductory only.

10

Q. Colonel Brown, on page 83 of the transcript about the seventh line, your answer in part reads "Extract manufacturing plants belonging to a subsidiary upper leather tanning company." You meant to say, did you not, "Extract manufacturing plants, also a subsidiary upper leather tanning company?" A. Yes.

20

Q. The extract manufacturing plants do not belong to a subsidiary upper leather tanning company, do they? A. No. I do not think I said "belonging to," because I knew that the extract manufacturing plants do not belong to a subsidiary upper leather tanning company, and the words "belonging to" should be changed to read "also." That would make the text accurate.

30

Q. On page 84, your answer to the first question on that page reads: "I think within the past ten years the greatest strides in increase of volume over production have been made." What did you intend to say? A. "Volume of production."

40

Q. On page 85, in the first paragraph beginning on that page, your answer reads that the export business of the company prior to the war was in excess of 25 per cent. of its volume. Do you wish to correct that? A. Yes; I stated that that figure given there was subject to correction. The facts are that prior to the war the company did 25 per cent. of the total volume of export business of the company, but only 12 per cent. or a little more of the company's business contributed to that volume.

In other words, the 25 per cent. figure that is used here should be cut about in half.

By Mr. Godfrey:

Q. I understood you to say 25 per cent. of the volume of export business done by everybody? A. That would be a correct statement, but this does not read that way and it is not what I said, but your statement would be correct. 10

By Mr. Ward:

Q. And of the total business done by your company, you now say that 12 per cent. or a little more was export business? A. That is right.

Q. On page 86, at the end of the answer which runs over on to that page, it reads, "The only exception being offal, of which we have had an unlimited surplus." Is that correct? A. No, sir. It should be: "of which we have had a limited surplus." 20

Q. On page 88, the first question and answer beginning on that page, there is reference to the overstocked condition in April, 1920, and it reads: "\$10,500,000"—that should be— A. (Interrupting) The dollar sign should be omitted. 30

Q. On page 92, first question beginning on that page, I intended that question to read: "If you had not written down in 1925, then it would have been written off in the following year or years." Did you understand my question in that way? A. Yes.

Q. On page 96, fifth line, "Mr. White" should be—? A. "Mr. Hoyt."

Q. On page 110, in answer to a question by Mr. Commissioner Eckes, you said, "They had never a depreciation item on their books." Is that strictly correct? A. No, sir. It was correct as applied to 40

tanneries and extract works, but we did depreciate our railroads and our lumber companies through the stumpage account for the lumber company. Therefore, the general statement there is not quite correct.

10 Q. Was the depreciation of lumber companies and railroads a considerable item? A. Yes.

Q. In percentage? A. In dollars and cents and in percentage, too, because with reference to the lumber company alone—unless you figure stumpage separately—the depreciation on the mills and tram roads and equipment of the latter companies is quite heavy.

Q. Of course, the depreciation of the stumpage comes in the form of depreciation if timber is cut? A. Depletion. That is right.

20 Q. The book value of the lumber mills and tram roads and so forth, is it or is it not a considerable item in the total property account? A. As of June 22, 1927, the item for saw mills was \$1,261,326.86; for tram roads and equipment, \$793,591.21; reserve set against both items for depreciation \$798,904.49, leaving a net figure of \$1,256,013.58. That is for the Central Pennsylvania Lumber Company, one of the lumber companies.

30 Now, let us take the Rib Lake Lumber Company—

By Mr. Godfrey:

Q. Could we put that sheet in evidence? A. No, sir.

Q. What are you reading from? A. Detailed record of the company.

Q. For what period? A. June 22, 1927.

40 Q. Would it not be valuable here? A. It gives intimate details of every subsidiary in the company,

more than fifteen subsidiaries—information of a character that I do not believe to be to the best interest of the company to go out.

Q. Nobody would get it except those interested.

A. When it is in the record it goes out. Shall I continue to read?

10

By Mr. Ward:

Q. Yes. A. Saw mills, \$488,130.40; tram road equipment \$382,513.10; against which the depreciation reserve is \$212,925.23; giving a net figure of \$657,717.86.

Mr. Godfrey: May we have the paper marked for identification?

(Paper is marked R-8 for identification.)

20

Q. On page 128, next to the last question and answer, you state "The profits were not included in surplus, the profits having been derived in that period." Did you intend to make that statement?

A. No; the word "not" should not be there. The profits are carried to surplus and the word "not" therefore is incorrect.

Q. On page 127, about the middle of the page, speaking of the timber lands, you say: "Will have a sale value on the average of \$200, maybe more." What figure did you give? A. The period between the figures 2 and the two zeros has been left out. Stripped lands are sold for \$2 an acre.

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Q. On page 131, the answer to the first question beginning on that page reads: "You cannot fix the figure, for this reason: Administrative, selling and general expense always affects the volume." What did you intend to say? A. Instead of "Administrative, selling and general expense always affects the volume," the statement should have been "Adminis-

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trative, selling and general expense is always affected by the volume."

Q. On page 132, next to the last line, the figure for "other investments" is given as \$6,263,907.53."

Mr. Godfrey: That was my question.

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A. There is a mistake of \$1,000 in that figure.

By Mr. Godfrey:

Q. What should it be? A. \$6,262,967.

By Mr. Ward:

Q. On page 134, second line, the sentence there does not appear to be clear in its meaning. Will
20 you amplify that? A. Right at the top of that page 134. I do not get any sense out of the second, third, fourth and fifth lines. They do not refer to anything before or after and they are incorrect and not plain as they are.

Q. The question by Mr. Godfrey on page 133 was: "Are there any other securities or stock included in that item under 'Other Investments'?" What is your answer to that question? A. My answer to
30 that question is that the company owned 50 per cent. of the capital stock of Hilliard & Merrill, a sole cutting operator at Lynn, Massachusetts. That 50 per cent. interest, including \$500,000 par value of preferred stock of Hilliard & Merrill Company stood on the books at an aggregate of \$597,792.

By Mr. Godfrey:

Q. Will you state how much included the preferred stock and how much common stock? A.
40 Yes; the \$500,000 of preferred stock represented the

entire preferred stock issue of the Hilliard & Merrill Company, and we own 50 per cent. of the common stock of Hilliard & Merrill.

By Mr. Ward:

Q. This item "Other investments" also included some real estate proposition in connection with the tannery home sites? A. Yes, sir. 10

Mr. Ward: We offer in evidence a consolidated profit and loss account of the Central Leather Company for the period January 1, 1927, to June 23, 1927, made up in detail comparable with that of the annual report.

(Marked Exhibit R-9.)

Mr. Ward: I offer in evidence tabulation of the items of maintenance and repairs for the years 1913 and following down to and including June 22, 1927. 20

(Marked Exhibit R-10.)

Mr. Ward: I would like to offer in evidence, if the Commissioners please, the annual reports of the company for the years 1919 to 1923 inclusive. The petitioner put in evidence the reports for the years 1924, 1925 and 1926, and it seems to us that if the company was going through somewhat of a transition period in that stage, the records would be complete if we go back to the pre-war period. 30

Mr. Godfrey: I consent to that.

Mr. Ward: I offer in evidence annual report of the Central Leather Company for the year ending December 31, 1919.

(Marked Exhibit R-11.)

Mr. Ward: I offer in evidence annual report of the Central Leather Company, for the year ending December 31, 1920.

(Marked Exhibit R-12.)

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Mr. Ward: I offer in evidence annual report of the Central Leather Company for the year ending December 31, 1921.

(Marked Exhibit R-13.)

Mr. Ward: I offer in evidence annual report for the year ending December 31, 1922.

(Marked Exhibit R-14.)

Mr. Ward: I offer in evidence annual report for the year ending December 31, 1923,

(Marked Exhibit R-15.)

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Mr. Ward: I also offer in evidence certified copy of the certificate of amendment of the certificate of incorporation of Central Leather Company, as amended August 19, 1909.

(Marked Exhibit R-16.)

Further Cross Examination by Mr. Godfrey:

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Q. Mr. Brown, at the end of December, 1924, did the Central Leather Company issue to the public certain bonds known as twenty-year six per cent. first lien sinking fund gold bonds? A. Were not those bonds dated April 1, 1925? They were subscribed for prior to the date of issuance, I believe.

Q. The old bonds were due April 1, 1925, which these were taking up, but the public issue was made at the end of December, 1924; isn't that correct? A. That is correct, I think.

Q. You wrote a letter at that time, in furtherance of the sale of those bonds, and describing the condition of the company? A. I probably did.

40

Q. Dated December 12, 1924? A. If you have it, I will identify it.

Q. I show you a photostat copy of a published print of that letter? A. I would say that I wrote that letter.

Mr. Godfrey: I offer in evidence photostat copy shown witness.

(Marked Exhibit A-11.)

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Q. If you desire to produce the original letter, I have no objection to it going into the record. A. I am willing to abide by this photostat copy.

Q. Kuhn, Loeb & Company, Kidder, Peabody & Company, Bankers Trust Company, Heidelberg, Ickelheimer & Company and Dominick & Dominick, were the brokers who sold these bonds for the company, were they not? A. They were the bankers who sold the bonds.

20

Q. And that letter was written by you for consumption by the public who purchased the bonds? A. To give, as nearly as I could, an accurate statement for publication; yes, sir.

Q. I show you a card and ask you if that card was issued by the United States Leather Company, the successor of the Central Leather Company? A. Yes, sir.

Mr. Godfrey: I offer this card in evidence. (Card is marked Exhibit A-12.)

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Mr. Ward: Won't you describe it for the record?

Mr. Godfrey: Exhibit A-12 is a card of the United States Leather Company showing a statement of earnings of Central Leather Company from April 1, 1927, to June 23, 1927, the date of the merger, and for the period January 1, 1927, to June 23, 1927.

40

Q. Mr. Brown, referring to Exhibit R-2, you show a deposit of stock each month from October, 1926, to a date subsequent to the merger agreement. Prior to these deposits there was sent out to all of the stockholders of the company the literature that has been marked in evidence here that refers to the proposal by the managers to change the financial structure of the company, was there not? A. I don't know. Is it your question that prior to the sale of these bonds—

Q. No; no; I am talking about this exhibit R-2. Prior to the deposit of stock, after the agreement which culminated in the merger and consolidation, there was sent out to all the stockholders of Central Leather Company, common and preferred, the literature that is in evidence here in reference to changing the financial plan gotten up by the Board of Managers? A. I think so.

Q. Are you not quite sure? A. I do not recall the literature, whether it was before or after. Some booklets were sent out before and some after, because there was a series of circulars.

Q. The main and original booklet referring to the entire plan was sent out before the deposit of stock? A. I think so, because it requested the deposit of stock.

30

Mr. Godfrey: That is all for the present.

By Mr. Ward:

Q. The certificates of deposit issued by the depository under the plan of reinstatement, were listed on the New York Stock Exchange, were they not? A. Yes, sir.

Q. And actively dealt in on the Exchange? A. Yes, sir.

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Mr. Ward: I would like to ask Mr. Stern a question.

Mr. Godfrey: Go ahead.

ALFRED J. STERN, a witness heretofore sworn 10
on the part of the applicants, recalled.

Further Cross Examination by Mr. Ward:

Q. Will you please turn to your memorandum that was offered in evidence? I refer particularly to the consolidated profit and loss statement as reconstructed from the listing papers. At the foot of that page there is a tabulation of abandoned plants written off and certain figures given under the heading, "Charged to operations." With reference to the figure for 1925 of \$2,840,555.30, you are satisfied, are you not, after hearing the evidence and examining the exhibits in evidence, that that figure for 1925 includes the so-called "Special Depreciation Reserve" created out of stumpage moneys? A. I am not satisfied upon that, for this reason: The listing papers, if I remember correctly, show the same net profit as is shown by the annual report, and the listing papers likewise for the same year show this amount as having been written off— 20 30

Q. Have you finished your answer? A. No. I think it is best to refer to the original papers.

The annual report for the year 1925 shows a net profit of \$1,465,075.99. The net income for the year 1925 as contained in the listing papers is the same amount, \$1,465,075.99, and the same tabulation in the listing papers shows, under the heading "Net reduction of plant account through deprecia- 40

tion and abandoned plants (not representing cash outlay)" \$2,840,555.30. It also shows "Interest on bonded and floating debt" of \$1,230,738.60, and "Net reduction through depletion (not representing cash outlay)" of \$1,164,465.80. It also shows "Income before deducting depreciation and Federal taxes" of \$6,700,845.69. So, from the information submitted to me I would infer that the \$2,840,555.30 did not represent the application of the special reserve.

ROLAND H. ZINN, sworn as a witness on the part of the respondents, testifies as follows:

Direct Examination by Mr. Ward:

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Q. You were comptroller of the Central Leather Company and are comptroller of the United States Leather Company? A. I am.

Q. Have you studied and are you familiar with the figures on the books of the Central Leather Company relating to the special depreciation reserve created out of stumpage moneys? A. I am.

Q. I show you the listing statement made by the United States Leather Company, Exhibit A-4, which contains a tabulation of earnings and the application of earnings. In the third column for the year 1925 is the figure \$2,840,555.30. Does that or does it not include the so-called special depreciation reserve created out of stumpage money? A. That item is starred with a footnote on the listing papers which states: "Partially offset by application of special depreciation reserve instituted in 1923 and not included in earnings," so that the income before deducting depreciation and Federal taxes includes the depreciation re-

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serve partially offsetting the item written off in that year to the extent of \$2,662,930.75 for 1925.

Q. There was not, or was there, a duplication of the write-off for this special depreciation reserve and write-off in that year for abandoned plants?

A. There was no duplication.

Q. The earnings over a period of years were only reduced once by the amount of that depreciation reserve? A. That is correct, and later that depreciation reserve offset abandonment of plants. 10

Q. Have you ascertained the figures requested for the depreciation in lumber mills and tram roads for 1925 and 1926? A. I have.

Q. What are they? A. The net amount set up for depreciation reserve for the year 1925 for the lumber companies, including saw mills and tram roads, was \$177,500.63 in 1926 it was \$203,738.30. 20

Q. And what was it in 1927? A. For the six months ending June 22, 1927, \$92,787.38.

Q. For the railroads for 1925 it was \$31,645.99; for 1926 it was \$40,595.05; for 1927, six months ending June 22, 1927, \$22,904.74.

By Commissioner Eckes:

Q. Can you tell us, if you know, whether the capital stock of the subsidiary company, that is the lumber company and the railroad company—are they separate companies, too? A. Right. 30

Q. Can you tell us whether all of that stock is owned by the Central Leather Company, except possibly qualifying shares? A. All of the stock of the lumber companies, except as to qualifying shares, is owned or was owned by the Central Leather Company; and all but a very few shares of the railroads are owned by the Central Leather Company. 40

Those few shares were held as reserve against the old Barclay Railroad Company away back in 1903 that were never turned in.

10 Q. In arriving at your costs of lumber, at what price do you take them, that is, at the market price or at cost to the lumber company; in other words are there any inter-company profits? A. I do not quite understand that. In our statement yearly, do you mean?

Q. What I am driving at is whether the lumber company sells to outsiders or only to the leather company? A. It is all sold to the outside, except such lumber as may be used in reconstruction work.

Q. It is the bark which the leather company uses? A. That is right.

20 Q. And that bark was taken at what price? What I mean is, not so much the profit but more so as to the rate of profit, if any? A. It was sold at the market price at which the lumber company could have sold it to any other outside buyer.

Cross Examination by Mr. Godfrey:

30 Q. Looking at the listing papers, Exhibit A-4, on that same page, for the year 1925, you have there "Income before deducting depreciation and Federal taxes, \$6,700,845.69." Is that correct? A. That is right.

Q. That is correct? A. As stated in the listing papers; yes.

Q. Not as stated in the listing papers. I am asking you, as comptroller of the company, in view of what you have already testified to, is that figure stated in your listing papers correct? A. Why, I assume that it is. If it is in these listing papers, it must be correct.

40 Q. Didn't you supervise the preparing of these

listing papers, or the figures in them, as comptroller of the company? A. These figures were prepared by Price, Waterhouse & Company.

Q. Did you check them over at all? A. We did.

Q. Under your supervision they were checked over? A. They were.

Q. Then, you can say directly whether these figures are correct or not? A. I would say they are correct. 10

Q. Now, Mr. Zinn, the figure on that sheet shows us: "Net reduction through depletion (not representing cash outlay) \$1,164,475.80." Is that correct? A. Yes, sir.

Q. Now, you have also testified for that year to a depreciation in lumber plants of \$177,500.63. Is that right? A. That is right.

Q. You have also testified to a depreciation in the value of the tram roads— A. (Interrupting) 20
Not tram roads—railroads.

Q. Railroads—a depreciation of \$31,645.99? A. Yes.

Q. Those three items added together amounted to \$1,373,622.42. Have you that addition? A. I have not. I will make it up. Yes; \$1,373,622.42.

Q. Now, Mr. Zinn, the figure in the third column of \$2,840,555.30 includes the two figures of depreciation on lumber plants and railroads, does it not? A. I would say that it does. 30

Q. Then, we have a deduction for depletion and depreciation, the three figures, \$1,373,622.42. Subtracting that from the income given here of \$6,700,845.69 leaves a balance of net income, outside of interest on bonded and floating debt, of \$5,327,223.27. Is that correct? A. The figure you give is right; yes.

Q. You testified that the figure of \$6,700,845.69 is correct? A. I do not know what question you 40

are going to ask following the one you have just asked me. I say that figure is right as far as you have gone.

Q. Is that the net income for the year 1925 before deducting for abandoned plants written off and interest on funded and floating debt? A. Yes.

10 Q. Then, deducting the interest on funded and floating debt, \$1,230,738.60, leaves \$4,096,484.67, exclusive of the amount which you have written off for abandoned plants. Is that right? A. Yes.

Q. In other words, that represents the net income for 1925, outside of abandoned plants? A. That is correct. It is not the net income for operations for the calendar year.

20 Q. Does it not show there in the listing papers as net income for the calendar year? A. I said it is not the net income from operations for that calendar year.

Q. Does it not show on this sheet that it is the net income for that calendar year? A. You have not taken into consideration the reserves that were used, not offset, which was taken into income in that year.

Q. They were taken out again? A. They are in that figure which you mention of four million odd dollars. Reserves were taken into that.

30 Q. They were taken in and taken out at the same time? Yes, sir, but they had been set up in prior years.

Q. And they were taken out, too? A. That is right.

By Mr. Ward:

40 Q. The heading in the first column on the left in this portion of the listing statement reads: "Income before deducting depreciation and Federal taxes," does it not? A. That is right.

Q. Now, the net income as shown in the last column on the right, agrees to the penny with the net income as shown on the annual statement for 1925, does it not? A. That is right.

Q. Does the income in the first column on the left compare with the gross income as shown in the report for the year 1925? A. It certainly does. 10

Q. What reconciliation is called for in comparing these two items, that is to say, in the listing statement and in the annual report?

Mr. Godfrey: The witness says it does compare with it. It does not require any reconciliation.

A. The use of the reserves that were taken in during that year. 20

Q. Which reserve is that? A. The reserve which is accumulated by the interest and earnings from the special depreciation fund.

Q. That reserve has been taken out of income over a period of how many years? A. From 1913 to September 30, 1925, inclusive.

Q. Would this tabulation of income as prepared by Price, Waterhouse & Company embodied in the listing statement been more correct if they had written back that reserve over a period of years instead of writing it back into income for one year? 30

Mr. Godfrey: This has been held out to the public by the Stock Exchange as representing the true facts. He is now trying to challenge it and show it does not represent the true condition of the company. I think they are bound by the figures and facts that they have put out and should not be permitted to say they are incorrect at this stage. 40

I think they are estopped from attacking their own records.

The Chairman: Assuming the truth of your position, Mr. Godfrey, we are not concerned with what has been said to the listing committee of the Stock Exchange.

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A. In the several years previous to 1925 the net income would also have been affected by abandonment. The surplus account, however, was unaffected at the end of 1925.

Mr. Ward: I think it would be proper for us to put in evidence the entire letter written by the president to the bankers in December, 1925, in lieu of the extract which has been offered by Mr. Godfrey.

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Mr. Godfrey: The only reason I could put in the extract was because that was the only information given to the public.

The Chairman: Have any of the other gentlemen any testimony to offer?

Mr. Sleight: Not having heard the testimony adduced here this morning it may be that there is something I would want to put in. I may or may not.

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Mr. Ward: That is satisfactory as far as we are concerned.

Mr. Merritt: I have no testimony that I wish to submit at this time. After reading the testimony I may want to offer further testimony, but at the present time I rather doubt it.

Mr. Avery: The record will show the same statement on behalf of Mr. Upham.

Mr. Godfrey: I wish to recall Mr. Stern.

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ALFRED J. STERN, a witness heretofore sworn, on the part of the applicants, recalled.

Further Direct Examination by Mr. Godfrey:

Q. Have you gone over the figures given to us by the respondent in the nature of their numerous exhibits which have been offered in evidence here? A. Yes, sir. 10

Q. And you have read them over and checked them up? A. I have examined them.

Q. Have you anything to tell us as a result of your examination of their figures? A. Upon the basis of the figures and facts which were submitted since the first report was compiled, I reviewed and revised my original memorandum, and if agreeable I will briefly review the revision that I have made. 20

Q. Yes. A. The date at which the value of the stock, the full market value of the stock is to be determined, having been established to be June 22, 1927, I first computed the accumulated dividends to April 1, 1927, which was the regular dividend date, and found it to be \$42.00 and also for the period from April 1, 1927, to June 22, 1927, a period of two months and twenty-one days, which I computed to be \$1.57; so that upon the basis of the preferred stock being entitled to priority for par and accumulated unpaid dividends, it would have been entitled to \$143.57 per share. 30

I have next taken the consolidated balance sheet of the company as of June 22, 1927 and rearranged the items so as to show with respect to the assets, or the total cash assets or the equivalent of cash, call loans and Liberty bonds, so as to show what that total is, and likewise have transferred the deficit from the debit side of the balance sheet to the credit side of the balance sheet so as to show that the net worth of the company, as per this bal- 40

ance sheet, was \$55,544,308.28; whereas the par value of its preferred stock was \$33,299,050.00; and the excess of the net book value over the par value of the preferred stock was \$22,245,258.28.

I have next analyzed this balance sheet for the purpose of showing that the net current assets were the equivalent of \$108.87 per share of preferred stock; that the other assets, after deducting the funded debt, were the equivalent of \$58.97 per share of preferred stock, making a total of \$167.84 per share; that if the deferred charges to profit and loss which are shown on the balance sheet as an asset, be included they would add \$4.26 per share, making the net assets applicable to preferred stock, before deducting reserves, equal to \$172.10 per share. The reserves are the equivalent of \$5.30 per share; so that the net assets applicable to that stock, after deducting reserves, is the equivalent of \$166.80 per share of preferred stock, or an amount in excess of par plus accumulated unpaid dividends, of about \$23 per share.

As a foot note to this analysis I have shown what the funded debt was, also bonds retired through sinking fund, \$2,576,000, leaving a balance of \$12,424,000 of which \$3,755,000 was in the treasury of the company, leaving outstanding in the hands of the public \$8,669,000; and on June 22, 1927, there was in the sinking fund represented by cash and accrual, \$1,130,824.27, leaving a net funded debt of \$7,538,175.73.

In this analysis I have deducted this net funded debt from the other assets because of the statements made in the annual report to the effect that the operation of the timber properties would retire that funded debt before the maturity of the bonds and likewise because of the fact that the amount accumulated in the sinking fund during two and a

half years that the bonds had been in existence, fully warranted that statement.

I have next taken the bond offering circular and other facts in connection with this case for the purpose of determining whether or not the book value of the assets, as stated in this statement, represented a conservative or excessive valuation, and the conclusion I arrive at is that the assets as stated in the balance sheet of June 22, 1927, represent a conservative valuation. 10

The 1925 report states that the book value of the company's assets as of September 30, 1925, were reduced by adjustments aggregating \$7,407,078.44 to cover the writing off of unnecessary plants and the establishment of sound plant values for the remaining plants and other assets of the company. These adjustments have been made, according to the testimony, pursuant to the report of Messrs. Sanderson & Porter, engineers. The bond circular describing the new issue of Central Leather Bonds, which is dated December 15, 1924, says in part as follows: 20

"Messrs. Sanderson & Porter have estimated the value of the company's property, including its wholly owned subsidiary companies and its interest in affiliated companies and net current assets of the company and its wholly owned subsidiary companies (after deducting reserve and current liabilities) based upon their study as of December 31, 1923, and the company's report for the first six months of 1924 (adjusted to evidence the effect of the present financing) at \$76,056,992.00, while the company's only funded debt will be the new issue of \$15,000,000 bonds." 30

As per the appraisal of Messrs. Sanderson & Porter, the net assets applicable to the capital stock of the company at June 30, 1924, would amount to the sum of \$61,056,922.00. 40

The net assets applicable to the company's capital stock of June 22, 1927, as per the company's balance sheet as of that date, were \$55,554,308.28.

10 The surplus net profits for the period from June 30, 1924 to June 22, 1927, which are of course included in this value of \$55,000,000, amount to \$3,694,355.49, so that excluding the surplus net earnings accumulated subsequent to June 30, 1924, the book value of the net assets of the company, as adjusted at June 30, 1924, for the purpose of comparison with Sanderson & Porter's appraisal, was \$51,849,952.79; in other words, it would appear that the book value of the assets, as shown upon the books of the Central Leather Company, was less than the appraised value of Sanderson & Porter by approximately \$9,000,000.

20 The purpose of this tabulation is not for the purpose of casting discredit upon the statement of the Central Leather Company, but merely for the purpose of establishing that the book value represents a conservative valuation.

The bond circular further states:

30 "Messrs. Sanderson & Porter, engineers, who have made an extensive investigation of the business and properties of Central Leather Company and its subsidiary and controlled companies, have reported that in their opinion, based upon the prices and costs prevailing December 31, 1923, the company should receive from its Pennsylvania and Wisconsin timber properties alone, operated as commercial lumber and pulp wood properties, more than \$25,000,000 (before Federal and State income taxes) before their exhaustion and prior to the maturity of the new issue of bonds."

40 These timber properties are included in the company's statement at December 31, 1924 (1924 report, page 11) in the item "Balance of property

account" which item is \$12,885,214.64; so that the amount ultimately realizable from the timber property is estimated by Sanderson & Porter as more than \$12,000,000 in excess of the amount at which they are carried upon the books. The same intent is there, not that the valuation of the books should have been \$25,000,000 but merely as an indication that the valuation upon the books does represent a conservative valuation. 10

The total amount charged to surplus for the adjustment of book values of the company's property and other assets, as compiled from one of the exhibits which was submitted by the respondent, or rather from two exhibits, aggregates \$41,420,507.10. That is, since 1909 book values have been reduced by that amount exclusive of the amounts ordinarily charged to operation for depletion. 20

In view of the above facts, the residual values as now stated upon the books and in the balance sheet at June 22, 1927, are considered by me as representing a most conservative valuation of the sound current values of the remaining plants and other assets of the company, from such facts as have been submitted to me.

I have next addressed myself to an examination or consideration of the earning power of the company and the earnings applicable to the preferred stock. 30

The bond circular dated December 15, 1924, states as follows:

"Central Leather Company has earned a large surplus over all charges in almost every year since its organization in 1905 and for the ten years ending December 31, 1923, the average annual net income applicable to the payment of interest and Federal taxes amounted to \$5,867,801.00.

"These average earnings were made in spite of 40

the fact that due to the large drop in the value of inventories and the demoralization in the leather industry following the close of the World war, the company suffered very large losses for the four year period from 1920 to 1923."

10 What I have just read is a quotation from the circular. What follows is my own memorandum.

After deducting interest on funded debt, \$15,000,000 at 6 per cent., or \$900,000, and Federal income taxes at present rates—13½ per cent. on \$5,867,801 being the average net earnings for the ten-year period, or \$792,153, making total deductions of \$1,692,153, the average balance available for the preferred stock for the ten-year period is \$4,175,648, as compared with the amount required to pay dividends of 7 per cent. per annum thereon, 20 being 7 per cent. of \$33,299,050, the preferred stock dividend requirements being \$2,330,933.50; in other words, the average net earnings over a ten-year period, including those years in which there was a demoralization in the leather industry, were almost sufficient to cover the preferred stock dividend requirements.

The earnings applicable to the preferred stock, as evidenced by the more recent reports of the company, is shown in the following tabulation:

30 For the purpose of showing the present normal earning power, the operations for 1925 should be adjusted by excluding as a charge against income certain non-recurring charges, such as the charge-off for abandoned plants and the excessive charges for maintenance, repairs and replacements, and for expenses and losses of all companies, which resulted from the operation of plants which were subsequently abandoned. The operations for 1926 are not shown herein for the reason that, as stated in 40 the company's annual report for this year, it ex-

perienced certain unforeseen and unusual misfortunes as a result of a forest fire in its timber lands and a heavy inventory write-off which prevent that year from being representative of the earning power of the company. I have excluded interest on funded debt, a deduction from income in this tabulation, for the reason that the company is now or was at June 22, 1927, in possession of sufficient cash and call loans to retire, if it so elected to do, its funded debt in its entirety. The details with respect to the respective adjustments are shown in my memorandum, which I will not read. 10

By Commissioner Gardner :

Q. You said you did not consider the bonds, because they could pay them off. They were getting an income from the investment. In other words, it is a pair-off? A. It is not altogether a pair-off. To that extent these figures are subject to revision. If you take approximately seven and a half million dollars and apply the call loan rate, which is about 4 per cent.— 20

Q. (Interrupting) That is a matter of policy. If they want to keep their money in that shape, why should you go into it. Whether they want to do it or not, it is a charge-off. It is a factor that you leave out on one side and do not bring in on the other? A. Yes. 30

By Mr. Godfrey :

Q. Can you reduce your statement to some extent? Just summarize it more thoroughly. A. I will try to. I am trying to convey the thought that is in this statement first.

For the year 1925 I have taken the net income, before deducting interest on bonds, and I have add- 40

ed to that the amount shown in the listing papers as abandoned plants written off and depreciation, amounting to \$2,840,555.30, together with the excess in the expenditures for maintenance, repairs and renewals and for expenses and losses of all companies, as reported in the annual report, over
10 the amounts for corresponding expenditures as reported in the annual report for 1926, after taking into consideration the normal decrease, or the decrease which is proportionate to the decrease in sale. The tabulation for that follows and also the tabulation with respect to the funded debt and cash funds. The net amount of bonds outstanding in the hands of the public, June 22, 1927, was \$8,669,000.00. The amount of cash, call loans and Liberty
20 bonds in the hands of the company at that date was \$9,920,838.59, or approximately one and one quarter million dollars in excess of the outstanding funded debt of the company.

With respect to maintenance and repairs and expenses and losses of all companies, I show the 1925 expenditures, which I believe were testified to as being rather in excess of the normal expenditures which could be expected to be incurred in subsequent years. I have deducted therefrom the normal expenditures which I have put down as being the
30 amount spent in 1926, and that shows an excess in 1925 over 1926 of approximately two million dollars.

The sales for 1926 were less than the sales for 1925 by approximately ten per cent. and therefore I have made a further deduction of ten per cent. of the actual expenses for 1925, to cover this decrease resulting from decrease in sales, which amounts to a figure in excess of \$500,000, and leaves that figure of approximately one and a half million dollars as
40 representing the excess of expenditures for main-

tenance, repairs and replacements and expenses and losses of all companies over normal, of this amount.

By Commissioner Gardner :

Q. Just a moment right there. Assuming that every stock buyer has the interest and the ability to go into the things that make up the market value of the stock, is there anything that you have discovered that the company has not properly told or kept out of their records? Is it your point that the public had not full information from which they might judge the value of the stock? A. No. I think the only point with respect to which the public was not fully informed would be the amount of depreciation and depletion written off and, with respect to the last year, the amount of sales. 10 20

Q. And then these things that you are reading are the premises on which you base the conclusion you started off with, as to the figures you arrived at for the liquidating value and book value and so forth? A. I am addressing myself to these two factors, first, the established value of the stock because of earnings applicable to the stock, and next, to the stock market operations.

Q. All the elements on which you rely for your conclusion were available to everybody else, were they not? Could anybody else have taken all of the public information and arrived at the same conclusion that you have arrived at? A. I would say, to the greatest extent, yes. With respect to some matters, no. The matters which I would say no to, would be the earnings which were derived from this so-called special reserve fund, the bonds which had been purchased, which were not disclosed in the annual report; likewise the depletion which 30 40

had been written off, which was also not disclosed in the annual report; and with respect to the year 1926, the total volume of business.

Q. It was all there, but it had to be analyzed?

A. No; these last matters which I have spoken about were not there. Other matters were there.

10 Q. There were some totals that you went a little further and checked up? A. This information which was submitted in Respondent's Exhibit 6, the history of the special depreciation reserve, which showed profits—I will read the profits for the last few years:

For the year 1921	\$578,000
For the year 1922	543,000
For the year 1923	608,000
For the year 1924	666,000

20

January 1, 1925, being the interest date upon the bonds which were held in that fund, the coupon maturity, \$169,000.

In other words, during this period, from 1913 to 1925, it appears that there were profits amounting to \$4,034,000, which, as far as I have examined the annual reports, are not reflected in the annual income statements of the company.

30 Q. Now, about how many points—leaving the expression “market value” out of the question for the moment—you have gotten out certain figures representing some kind of a value,—how many points, based upon the figures that you have, would the public have added, if they had known as much as you do? A. Take the last few years—take the year 1924, which was the last full year when this fund was in existence before it was wiped out—the profits which were not reflected in the annual statement amounted to \$666,000, which is the

40

equivalent of about \$2 per share upon the preferred stock. Does that answer your question?

Q. I get what you are driving at. A. That is it. They had \$2,840,555.30 written off for abandoned plants, and approximately \$1,500,000 for excess maintenance, expenses and losses. The net income, as adjusted before deducting these items would be \$6,867,000, as compared with the dividend requirements on the preferred stock of \$2,330,000. If that counterbalances the exclusion of the bond interest as a charge, we include approximately seven and a half or eight million dollars of call loans at approximately 4 per cent., we have \$300,000 to consider as an adjustment on this figure. 10

Q. Of course, that is entirely a matter of company policy. People have to lose money for certain reasons. I do not see the value of such a calculation. Do not let me interrupt you. A. The operations for the year 1926 I think show a net profit of \$500,000 for the year. During one of the quarters, however,—the quarter which is referred to specifically in the annual statement—there was a loss of \$700,000, and exclusive of that loss, the profits for the other three quarters was \$1,200,000; but the effect of \$400,000 of profits per quarter for the year 1926, as taken from the annual reports, would not indicate that the preferred dividends had been earned in full, but if the \$400,000 per quarter is taken as a fair basis, the profits would be, after deducting bond interest, approximately \$1,600,000 for the year. 20 30

Q. What quarter is that? A. The quarter ending March 31, 1926, showed a profit of \$124,400.32. The quarter ending June 30, 1926, showed a loss of \$716,503.81. The quarter ending September 30, 1926, showed a profit of \$304,642.43. The quarter ending December 31, 1926, showed a profit of 40

\$822,370.64. The total for the year, after deducting interest upon bonds was \$534,000. Before deducting interest and discount upon bonds the profit was \$1,494,000; and, with the exception of the losses incurred, which was referred to in the annual report, such as the forest fire which incurred a

10 loss—

Q. They are not improper deductions, are they?

A. They are proper deductions in the year 1926, and the pertinence of this calculation is not for the purpose of attacking the figures, but for the purpose of determining what the normal earning power is.

Q. They were right for 1926? A. They were right for 1926.

Q. There was not anything improper about them? A. There was nothing improper with respect to the charge upon the Leather Company's books. In other words, if they incurred a loss in 1926, it was proper that it should be charged in 1926, and the only point with respect to 1926 calculations is: Do the actual results for 1926 represent what may fairly be assumed to be the full earning power of the company? If they do then the results of 1926 should be taken. If they do not, then they should not be taken and they should be adjusted for any extraordinary losses which may have occurred in that year.

30

By the Chairman:

Q. Which is the purpose of your testimony? A. That is the purpose of my testimony. The purpose is not to throw any discredit on the statements presented by the company.

By Commissioner Eckes:

40 Q. Have you any information concerning the

reason for the big losses in the second quarter? A. Yes; the annual report says:

“On page 7 of the report will be found a statement indicating that your company has operated at a profit for every three month period, beginning with the quarter ending September 30, 1924, with the exception of the quarter ending June 30, 1926, which showed a loss of \$716,503.81, occasioned by the weakness of hide and leather prices which accompanied the somewhat general recession in commodity prices in the spring of 1926, and involved a heavy inventory write-off at the end of that quarter. 10

“Another unforeseen and unusual misfortune experienced by the company, during this same unprofitable quarter, was a forest fire in our Pennsylvania timber lands, which destroyed over 14,000,000 feet of cut and peeled logs and entailed a net loss of about \$245,000, besides occasioning added expenses and interrupted mill operations. This fire originated on State lands over five miles from our holdings and was swept by a gale so rapidly as to be uncontrollable. The company’s losses from similar fires for over twenty years prior to this disaster have aggregated approximately \$75,000.” 20

I think Mr. Brown’s testimony was to the effect that \$245,000 represented the cost price of this lumber, and that the sale price was approximately \$400,000. 30

It is also stated in this report:

“In my report for the year 1925 I have mentioned the fact that heavy expenditures have been incurred, in connection with the readjustment of the company’s finances and business, which would not be repeated in subsequent years. Further improve- 40

ments along this line were effected in 1926 and will be reflected in subsequent years. There are, however, economies still to be effected, some of which will be made possible by the readjustment of the company's capital structure."

10 By Commissioner Gardner:

Q. All your testimony is based on things "as is". You have not undertaken to take in any element of what might happen in the future because of any extraordinary developments? A. No. I have taken the results for the year 1925. I have not taken the results for 1926 because they require too much adjustment and because of the reasons I have given. I have taken the results from January 1 to June 22,

20 1927.

Q. "As is"? A. "As is".

Q. Without any element of future possibilities of the business? A. Right. With reference to future possibilities of the business, the only information I have is that contained in the—

Q. You did not consider that? A. You mean whether I have made an appraisal—

Q. Have you brought into your conclusion any
30 element of future possibility that the business is going to be bad or whether they would not have a fire or anything like that? You have taken things "as is", have you not? Your conclusion at the time was that that was the value of the property? A. Yes. For the first six months of 1927, from January 1 to June 22, 1927, the net profits of the company, as reported, before deducting bond interest and discount, was \$1,486,446.45, as compared with dividend requirements on preferred stock of \$1,165,466.75.

40

In connection with all of these figures, the profits that I have testified to are the profits reported after charging off depletion, so that the actual cash realized from the operations was considerably in excess of that amount.

By Commissioner Eckes:

10

Q. But that cash, under the operation of the sinking fund, would have to be used to extinguish the bonds; in other words, that cash would not be available? A. I do not know what amount is required for the sinking fund, but the cash, to the greatest extent, would not be available for anything. If the depletion was to the amount, none of it would be available.

With respect to the plan of capital adjustment, a notice of the plan was contained in the 1925 report, which report was dated March 23, 1926. This report did not give any details of the plan, and the plan appears to have been submitted to the stockholders under date of October 1, 1926, at which time it was stated that more than 85 per cent. of the preferred stock had been deposited under the plan.

20

By Mr. Ward:

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Q. That cannot be true. It could not have been October 1, 1926? A. Under date of October 1, 1926, this plan was submitted to stockholders, which plan was declared operative February 25, 1927, at which date there had been deposited under said plan 283,786 shares of the preferred stock, or more than 85 per cent. thereof. I made a mistake in my reading.

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By Commissioner Gardner:

Q. What was the first date that the public had any intimation that there was a plan on foot? A. It was contained in the 1925 report, issued March 23, 1926.

10 The affidavit in evidence shows that at the end of May, 1926, the amount of preferred stock that had been deposited was 88.7 per cent., and that at the end of June it was 90.95 per cent.

Q. Had the details of the final plans been published at that time?

Mr. Ward: The plan was published October, 1926.

20 Commissioner Gardner: There was some testimony about the plan being altered.

Mr. Godfrey: It is my contention that the basis held out to the public in 1926 was a sale of all the assets to the new company, and it was later changed from a sale to a merger and consolidation, purely a legal effect, which had nothing to do with book-keeping.

30 Commissioner Gardner: It was the mere method as to how it was to be done that was changed.

Mr. Godfrey: Exactly.

A. In my report I have left a blank in which to put the number of shares that had been deposited June 22, 1927. That figure has not been furnished to me.

By Mr. Godfrey:

40 Q. You may proceed. A. I have next made a memorandum of the issues of the amount of new

securities and the dividends applicable to those new securities issued in exchange, under the plan, for the old securities.

I then discuss the effect of the priority of preferred stock as to the assets. The net assets June 22, 1927, were fifty-five million dollars.

10

By Commissioner Gardner:

Q. The priority of which—the old or the new?

A. The effect which the plan has.

Q. On the priority of the old? A. The effect which the plan has upon the priority of the old preferred stockholder, what priority he would have by reason of the plan.

Q. They are not forced to take stock. They are going to get cash, I assume. A. Yes, sir.

20

Q. So, anything, about the new stock, you are not very much concerned with, are you? A. Except to this extent, which is the thought which I am coming to subsequently.

Q. You are putting in a large amount of figures and we want to get the reason for it? A. The thought which I am coming to is that after the publication of the plan, the prices of stock as quoted upon the New York Stock Exchange, are affected by the new plan.

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By the Chairman:

Q. Adversely, do you mean? A. Depending on the plan.

Q. In this particular instance? A. In this particular instance I think adversely.

Q. Do you form any conclusion as to any extent? A. I think the prices of the old preferred stock upon the New York Stock Exchange would be dependent upon what plan of reorganization had

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been put into operation. To the extent that the full rights of the old preferred stockholders were recognized under the new plan, to that extent the prices of the old preferred stock would have been increased.

10 By Commissioner Gardner:

Q. Does the record of sales bear you out? Does the record of market prices bear you out in that conclusion? You say when the plan came out, certain things in the new stock would have affected the price of the old stock. Does the course of what actually happened bear you out? A. I do not think that correctly interprets what I had in mind. There being a deficit in the old Central Leather
20 Company it became impossible to declare dividends upon any of its stock until that deficit were wiped out. Once that deficit were wiped out and earnings could be applied to the declaration of dividends, the stocks would have a very much higher value. There was no plan at all which contemplated the wiping out of that deficit and bringing nearer the date of dividends, which would, I take it, have resulted in an increase in market operations in the Leather Company stock.

30 By the Chairman:

Q. Referring to this particular plan which was, I assume, consummated, when did it become known that the plan was likely to be consummated; in other words, when was there a sufficient deposit of stock? A. I think the plan was declared operative February 25, 1927.

Q. And the declaration of that fact, did that, in
40 your opinion, adversely affect the market price or market value of the stock of the Central Leather

Company? A. No; I think, as I stated before, that any plan at all which contemplated the elimination of the deficit, so that future earnings would be applicable to the declaration of dividends, so that dividends could be paid on new stock, would favorably affect the stocks of the old company.

Q. Then, the answer that you made to a prior question I asked you, possibly was incorrect when you said that the possibility of this particular plan being consummated would adversely affect the value of the stock. You did not intend to convey that impression? A. No; what I had intended to convey was this, that the announcement of this particular plan and the consummation of this particular plan which, to my mind, deprived the preferred stockholders of Central Leather Company of some of the equities which they had, would adversely affect the value of the stock as compared with some other plan which recognized all of those equities. 10 20

Q. Not formulated, not known, or not published—the other plan? A. Yes.

Commissioner Eckes: Is there any information as to the percentage of stock necessary to be deposited before the plan would become operative? 30

Mr. Ward: Mr. Weisburg testified that 95 per cent. had been deposited.

Commissioner Eckes: How much was required?

Mr. Ward: It was within the discretion of the managers. I think when approximately 85 per cent. had been deposited—

Commissioner Eckes: It was declared operative in February, 1927?

Mr. Ward: Yes. 40

Mr. Godfrey: I think a majority, under the law, would have been sufficient.

10 Commissioner Gardner: There was some dispute at one of the hearings with reference to the Standard Statistics card which was introduced. I think one of the witnesses said he had not compared the tabulation with the Standard Statistics card. Is there any conflict between the two sides as to these figures which have been submitted? Both sides have put in prices. We would like to know if either side challenges the other's figures?

Mr. Ward: I was not furnished with a copy of that card.

20 Commissioner Gardner: We ought to be informed on this, if there is any objection to the figures on either side.

Mr. Godfrey: There was a majority of the stock deposited by November. In November there was a majority of the preferred and common stock deposited.

Commissioner Gardner: November, 1926?

Mr. Godfrey: Yes.

Commissioner Gardner: It was not declared formally operative until the following February?

30 Mr. Godfrey: Yes; there was deposited in November a majority of the stock.

We contend that the wording of the statute has nothing to do with the prices sold on the Stock Exchange.

40 Commissioner Gardner: That is your contention, but if we should disagree with you, we should have sufficient information to enable us to base a conclusion on other lines. There is no use holding these hearings and then finding that we have not the

proper evidence upon which to base a conclusion.

Mr. Godfrey: If the old stock was taken out of the market to the extent of 65 per cent. of the preferred stock and 63 per cent. of the common stock, then, by inference—

Commissioner Gardner: You say, “by inference”. We ought to have something more than that. 10

Mr. Ward: Our exhibit shows the volume of preferred stock deposited week by week during this period and of course, for every share of stock that was taken out of the market, a certificate of deposit was issued, which was dealt in on the Exchange.

Mr. Godfrey: The certificates of deposit were dealt in under the new plan, and we have no right to consider any prices under the new plan. 20

Commissioner Gardner: Mr. Godfrey, have you put in all the testimony that you intend to put in as to market prices and so forth?

Mr. Godfrey: Yes, with the exception of what is in the memorandum, which I will offer.

Mr. Ward: I take it that my original objection to Mr. Stern’s testimony as to values and so forth are renewed and will be received as to this testimony in rebuttal. 30

The Chairman: I assume there is no objection to that.

Mr. Godfrey: No.

By Mr. Godfrey:

Q. Proceed, Mr. Stern. A. I think, as long as I am so near the finish, I may as well proceed to 40

discuss the effect of priority of the old preferred stock in the assets of the company. The net assets of the company were approximately \$55,000,000, and there might be a decrease of approximately \$7,700,000 in assets which would leave net assets of approximately \$47,800,000. Even if there had
10 been that decrease, the net assets would have been sufficient to be equivalent to \$143.57 per share, being the amount of par plus accumulated preferred dividends.

By Commissioner Eckes:

Q. What is that figure of \$7,700,000 to which you have just referred? Is that merely a figure which you supply in order to illustrate? A. Yes.
20 In other words, there could be a decrease of \$7,700,000 and still be assets enough there to warrant paying the preferred stock, upon that basis, whereas, under the new plan, under the capital readjustment plan, net assets would have to show an increase of approximately \$6,100,000 before the assets applicable to the securities which were to be issued in exchange for the preferred stock, would be equal in amount to \$143.57 per share, and would have to show a further increase of approximately \$11,600,000, before the same margin of safety for the preferred stock was established, that is, before the assets applicable to the new securities to be issued in exchange for the old preferred stock will amount to the same amount of the net assets at June 22, 1927. In other words, whereas the net assets at June 22, 1927, were approximately fifty-five million dollars, under the plan the net assets which would be allocated to the holders of the old preferred stock would be only approximately \$43,000,000, the
30 other \$12,000,000 being represented by the common
40

stock. Before the assets, in back of the preferred stock amounted to \$143 per share, there would have to be an increase in the assets applicable to preferred stock of \$4,000,000, which, under the reorganization, whereby the class A stock issued in exchange for old preferred stock was entitled to two-thirds of the assets, involving a total increase in assets of the company of \$6,000,000, before the net assets applicable to preferred stock would amount to the same sum as they do now, in other words, \$55,000,000. There would have to be a further increase of assets applicable to the preferred stock of one-third again in the total assets of the company. 10

The old preferred stock was entitled to priority, to par plus accumulated unpaid dividends. The new prior preference stock which was issued, one-half share for one share of old preferred stock, was entitled to preference and par plus accumulated dividends likewise, and was redeemable at \$110, whereas the old preferred stock was non-redeemable. Figuring the prior preference stock at \$110 per share, or \$55 per half share, and figuring the \$5 which was payable to old preferred stock holders in cash, which makes a total of \$60 as compared with \$143.57, the prior preference which the old stock would have had, there is a difference of \$83.57; and to compensate the preferred stockholder for the loss of priority to the extent of \$83.57, he received three-quarters of a share of class A stock. 20 30

With respect to dividends the new prior preference half share is entitled to \$3.50 a year, as compared with a cumulative of \$7 a year for the old stock. As the class A stock received dividends, the loss of \$3.50 is naturally reduced, so that a share in class A received \$4.00 dividends and \$3.00 for three-quarters of a share, the total income to the 40

old preferred stockholder would be \$6.50 as compared with \$7.00, or a loss of only fifty cents; and if additional dividends were declared to the extent of \$2.00 per share upon both the class A and the common stock, the old preferred stock would be ahead of the game by one dollar per share per year, at which time, however, the common stockholder would likewise be receiving a dividend of \$2.00 per share per year.

This increase may eventuate as a fact, but as far as the preferred stockholder is concerned, to my mind it is an apparent increase only, for the reason that if he did not receive it as a holder of class A stock, the amount would be available for the payment of cumulative dividends on the old Central Leather Company stock.

This tabulation then shows the amount by which the old preferred stockholder would have a loss or gain as compared with \$7.00 per year on the old preferred stock.

By Commissioner Gardner:

Q. The only point of your testimony is that it affected the market price at the time? A. Yes.

Q. The prospect of what was going to happen did not allow a full, free and open market, as to that, do you testify one way or the other? A. That is just the point. I am coming to a statement of the Stock Exchange prices.

With reference to Stock Exchange prices, the announcement of a proposed plan of reorganization and the deposit of securities thereunder has the following effect upon the price of the stock as quoted on the Stock Exchange:

First—It eliminates from trading the stock deposited under the plan, thus narrowing the amount

of stock available for trading to a comparatively small amount of the total issue.

Second—With respect to the stock deposited, the quoted price of certificates of deposit will reflect not the value of the stock deposited, but the value of the securities to be received in exchange for the stock deposited. Central Leather Company preferred stock goes out of the picture, when the holder deposits his stock and receives his certificate. 10

Q. Was there a privilege of withdrawal of these certificates? A. I don't know.

Commissioner Eckes: Is there any information on that point?

Mr. Godfrey: There was no privilege. It was distinctly stated that they had no privilege to withdraw it. 20

The Chairman: Is the deposit agreement in evidence?

Mr. Godfrey: Yes.

Mr. Ward: Reading from a part of section 9 of the deposit agreement, page 12 of the plan of readjustment, Exhibit A-9, "The managers and the committees, with the approval of the Board of Directors of the present company, shall also have full power and authority, whenever they shall deem proper, to abandon or from time to time to alter, modify or depart from the plan or any part thereof. In the event of any change, modification or amendment of the plan, a statement thereof shall be filed with the depository and with the chairman of each of the committees. If, in the judgment of the managers or of either committee, such change, modification or amendment adversely affects the stock of either class, notice of such fil- 30 40

10 ing, containing a brief statement of such change, modification or amendment, shall be given by the managers as provided in article Twelfth hereof. Holders of certificate of deposit for stock of the class or classes so affected may at any time within thirty days after the first publication of such notice, upon surrender to the depository or sub-depository of their respective certificates of deposit in negotiable form, withdraw from this plan and agreement upon payment of such taxes as may be imposed on the transfer and delivery of the stock withdrawn."

By Mr. Godfrey:

20 Q. You may go with your answer, Mr. Stern. A. The announcement of a proposed plan of reorganization and the deposit of securities thereunder, I believe eliminates from the market all prospective purchasers except the following:

30 The purchaser who believes the stock to be received in exchange will be worth more than the quoted price of the old securities and who therefore buys the old securities in order to deposit them under the plan and receive the new securities; the management of the company or reorganization managers who might purchase the old stock with a view to depositing it under the plan so as to reduce the dissenting stock to a minimum and to obtain as large a percentage of stock assenting to the plan as possible. The purchaser who believes that the reorganization managers will be sufficiently desirous of purchasing his stock at a price in excess of its cost to him; the person who is sufficiently anxious to buy into a lawsuit to purchase the stock
40 with a view to asserting his rights and resorting to

litigation in order to protect them; and the speculator who might purchase as a stock market venture.

The announcement of a reorganization plan, therefore, to my mind, eliminates from the market the prospective bona fide purchaser who would purchase the stock upon the basis of its intrinsic value, as measured by its asset value, its income return, its present earnings or its prospective earnings. 10

With respect to Central Leather preferred stock stock market prices could not be expected to reflect true value at any time subsequent to March 23, 1926, when mention of a plan of capital readjustment was published in the 1925 annual report, and certainly not after October 1, 1926, when the plan was submitted to stockholders, after which latter date the bona fide investor was eliminated from the market as a prospective purchaser. The value of the old preferred stock as determined by the equities behind it and its present and prospective earnings ceased to be determining factors as affecting stock market prices and stock market prices as hereinabove stated were determined primarily, first, by the value given to the new securities which were to be issued in exchange under the plan, and, secondly, by the prices which the reorganization managers or the interests affiliated with them might be willing to pay for the stock in order to deposit it under the plan. 20 30

Had there been a plan of capital readjustment under which the rights of the preferred stockholder as set forth in his stock certificate, were fully recognized by the issue of no par value preferred stock having the same privileges as the old preferred stock, in exchange for the old preferred stock, upon a share for share basis; by the issue of no par value common stock in exchange for the old common stock, also upon a share for share basis; and by making some provision for the settlement of 40

10 cumulative dividends in arrears upon the old preferred stock either by the issue of new securities having a preference over the old common stock, or in part by the issue of such securities and in part by a cash payment on account of such arrears;—the announcement of such a plan as that would have resulted in making future earnings available for the payment of dividends on the old preferred stock and in establishing the market prices of the new securities issued in exchange for the old preferred stock at the full value of the old preferred stock.

Q. You have two additional sheets there, have you not? A. Yes.

20 Q. What are they? A. One sheet relates to the market fluctuations in the stocks of the new company, and I do not know whether it is particularly pertinent, except as indicating for a non-paying dividend stock such as the U. S. Leather Class A the price of \$46 would seem—

The Chairman: You offer the tabulation that the witness just read from, in evidence?

Mr. Godfrey: Yes; I offer it.

(“Memoranda re Central Leather Company, October 14, 1927,” marked Exhibit A-13.)

30 Q. Then the second sheet also refers to the United States Leather Company as testified to at the last hearing? A. I did not testify to that.

Q. No, that was the other side. A. Yes.

Mr. Godfrey: I offer in evidence Mr. Stern’s memoranda showing figures in reference to the testimony given by Mr. Brown and Mr. Zinn, and exhibits offered by the respondent.

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Mr. Ward: I object to it upon the ground that for the most part it is irrelevant; it contains much that is argumentative; it contains much in the way of comment that Mr. Stern is not, in our opinion, qualified to make, particularly as to the trend of market prices and the effect of the plan of recapitalization upon the market value of stocks and the like. 10

The Chairman: It will be received.

(Sheet entitled "Central Leather Company, stock market prices of new securities" is marked Exhibit A-14.)

(Sheet entitled "Central Leather Company, Merger and Consolidation," is marked Exhibit A-15.)

(At this point recess is taken until two o'clock in the afternoon. After recess witness resumes the stand.) 20

Cross Examination by Mr. Ward.

Q. Do you know that the Central Leather Company bonds are redeemable at 105? A. Yes, sir.

Q. In answer to a question you referred to certain factors affecting the accounts and assets being unknown or not generally known to the public. Did you refer to the fact that it is not specifically stated in the company's report that no depreciation was taken on the tanneries from year to year? A. The question is whether it is stated in the reports that no depreciation— 30

Q. Is it stated as to be apparent to the public investor that no depreciation had been taken prior to 1926? A. I do not recall it in the annual reports. If you want me to verify that, I will glance through them.

Q. Is it not a fact that in making up your orig- 40

inal compilation and tabulation you yourself were in doubt whether depreciation had been written off the tannery properties from year to year? A. No, because the listing papers stated that no depreciation had been written off prior to 1926.

10 Q. You referred this morning to a loss by the company in the second quarter of the year 1926, due to mark-down of inventory. Is it not true that to the extent that the inventory was written down in that quarter, the profits of the company for succeeding quarters were that much greater? A. The profits of the company in succeeding quarters and succeeding periods were that much greater.

20 Q. And conversely, if the inventory had not been written down in the second quarter of 1926, the profits in succeeding periods would have been that much less? A. Right.

30 Q. In your analysis of what I think you term the loss to preferred stockholders under the recapitalization plan, have you taken into consideration the convertible feature of the new class A stock? A. I think I have taken that into consideration and have mentioned it. In other words, at such time as the common stock will pay dividends in excess of \$6 per annum, it will be to the advantage of the class A stockholder to convert his stock share for share into common stock; and I think I bring that fact out in some of these papers which have been presented.

Q. Will you kindly refer to page 5, of your memorandum, Exhibit A-13, introduced this morning? A. Yes, sir.

40 Q. Referring to the item of \$22,993,496.02, do you not understand that that was written off in 1909 against intangible values on the books of the company? A. If you so state, I presume that is

correct. The only information I had is contained in the exhibit, and I have not quoted that exhibit.

Q. Did you not understand that the amount of \$8,126,149.12 written off in 1919, was also against intangible values and wiped out the balance of the intangibles on the balance sheet? A. The only information which I have with respect to these items is the information contained in respondent's exhibit 3, in which it is stated in respect to the \$22,000,000 in 1909; "amount charged to surplus to cover sundry adjustments," and with respect to the \$8,000,000 item in 1919, "amount charged to surplus in reduction of property account." These explanations as contained in your exhibit, Mr. Ward, are the explanations which I embodied in my summary. 10

Q. I now call your attention to an extract from the annual report of 1919, which was offered in evidence this morning. On page 7 thereof the president addresses his stockholders as follows: "Contemporaneously the intangible values included in the property account were reduced by a like amount and a further amount of \$8,126,149.12 has been appropriated from surplus in reduction of the property account and sufficient with available reserve to eliminate therefrom all intangible values." Does that not characterize the write-off in 1919 as I have stated? 20 30

Mr. Godfrey: You know, we only received this report this morning.

A. It would appear from the paragraph that you have just read that this amount is in reduction of intangible values. It says: "The intangible values included in the property account were reduced by a like amount and a further amount of \$8,126,149.12 has been appropriated from surplus, in re- 40

duction of the property account and sufficient for the available reserves to eliminate therefrom all intangible values."

Q. Will you please turn to page 6 of Exhibit A-13? A. Yes, sir.

10 Q. At the foot of that page there is a readjustment of the income for 1925. Mr. Stern, you do not understand, after hearing the testimony by the officers of the company and after examining their exhibits, that the operating income of the company for 1925 was \$2,548,014.59 plus the special depreciation reserve that was written off in that year, that was wiped out in that year? A. In view of the explanations offered this morning, the \$2,840,000 should not be added back to the \$2,548,000, for the reason that it does not represent income from operations during this year. In other words, although
20 stated as a deduction upon the listing papers from that income for that year of six million and some odd thousand dollars, I believe the listing papers are inaccurate and do not correctly set forth the true net income of the company for that year because of the fact that they include as income for that year the reserves which had been accumulated over a number of years previously.

30 By Commissioner Eckes:

Q. Is any part of the \$2,840,000 income for 1925?

A. I believe the testimony this morning is to the effect that \$2,600,000 or thereabouts, of that sum of \$2,840,000 represents this reserve and \$200,000 is depreciation which is a proper charge.

Q. For 1925? A. For 1925.

By Commissioner Gardner:

40 Q. Then, do you think that the listing statement is a little more favorable than what the facts war-

rant? A. The listing statement conveyed an erroneous impression of the income of the company for the year 1925; that the net income as therein stated for that year, was in excess of the true net income of the company; but the listing statement, incidentally, bears the date of June 24, 1927.

Q. What about the date? A. The date of the listing papers is June 24, 1927. 10

Q. Then, all the damage had been done, if there was any? A. The amount of net income as reported in the listing papers for the year 1925—

Q. Whether it was more favorable or otherwise, it could not have affected this present question?

A. Right.

By Mr. Godfrey:

Q. The intangible values that have just been referred to in the question asked you, do not affect the present situation because the values of the company were readjusted in 1923 by the engineers' report, were they not? A. Readjusted in 1925. 20

Q. By the engineers' report? A. Yes.

Q. And by the mark-down by the company of values even less than recommended in the engineers' report, on the books of the company? A. Yes. 30

Mr. Godfrey: That is all. 30

Mr. Ward: I am to send in a full copy of the president's letter.

The Chairman: Yes; and also a copy of the pleadings in the Chancery suit.

Mr. Ward: With regard to the right of a depositing stockholder under the plan to withdraw his stock, there seems to be nothing but the extract which I read before adjournment, except the following on page 13 of the plan: 40

“Deposited stock may not, without the consent of the managers be withdrawn from this plan and agreement except as and when in this agreement provided.”

10 The Chairman: Then, with the exception of whatever proof Messrs. Townsend and Merritt and Avery wish to offer, I understand this case is closed. Briefs are to be exchanged within three weeks and answer in briefs within one week thereafter.

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**Exhibit A-1—Extracts from Annual Report for the
Fiscal year ended December 31, 1926.**

* * * * *

To the Stockholders of Central Leather Company:

The Annual Report of the operations of your Company for the calendar year 1926, given herewith, shows, after bond interest and discount, net profits aggregating \$534,909.58.

10

On Page 7 of the report will be found a statement indicating that your Company has operated at a profit for every three-month period, beginning with the quarter ending September 30, 1924 with the exception of the quarter ending June 30, 1926, which showed a loss of \$716,503.81, occasioned by the weakness of hide and leather prices which accompanied the somewhat general recession in commodity prices in the Spring of 1926 and involved a heavy inventory write-off at the end of that quarter.

20

Another unforeseen and unusual misfortune experienced by the Company, during this same unprofitable quarter, was a forest fire in our Pennsylvania timberland which destroyed over 14,000,000 feet of cut and peeled logs and entailed a net loss of about \$245,000, besides occasioning added expenses in interrupted mill operations. This fire originated on State lands over five miles from our holdings and was swept by a gale so rapidly as to be uncontrollable. The Company's losses from similar fires for over twenty years prior to this disaster had aggregated approximately \$75,000.

In my report for the year 1925 I mentioned the fact that heavy expenditures had been incurred, in connection with the readjustment of the Company's finances and business, which would not be repeated in subsequent years. Further improvements along this line were effected in 1926 and will be reflected in subsequent years. There are, however, economies still to be effected, some of which will be made possible by the proposed readjustment of the Company's capital structure.

30

For over two and one-half years your Company has been confronted with the necessity of operating its manufacturing units at greatly reduced capacity, thus occasioning excessive costs, and of selling its product in a "buyers' market" occasioned by the war-time accumulation

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Exhibit A-1

of heavy stocks of finished leather much of which was of inferior quality. During a large part of this time your Company was also compelled to absorb the costs of maintaining numerous surplus idle plants and at the same time meet the expense of refunding the bond issue which matured on April 1, 1925. A personnel organized on a basis of war-time production had to be gradually reduced to proportions commensurate with the
10 Company's peace-time volume of business. However, in spite of these unfavorable conditions, since April 1, 1925, when your Company issued \$15,000,000 of Twenty Year 6% First Lien Sinking Fund Gold Bonds and borrowed \$1,500,000 for working capital, the following has been accomplished up to and including December 31, 1926:

The bank loan has been paid.....	\$1,500,000.00
Bonds have been called for redemption.....	1,801,000.00
Payments have been made to the Sinking Fund for bond redemption	812,371.59
20 Bonds of the Company have been acquired in the open market and held in the Treasury.....	2,943,000.00
The Company has loaned out at interest.....	7,800,000.00
The Company has bank balances in cash.....	1,525,201.49

A total of.....\$16,381,573.08

In the first two months of 1927, there has been a further addition of over \$1,432,000 to the above total.

30 This amount of cash has been derived principally from the liquidation of the Company's surplus inventories, including lumber sales, although practically \$2,000,000 of the amount is represented by the net profits of the Company from its operations for the two years ending December 31, 1926.

Your Company's operations for the first two months of 1927 indicate substantial improvement over 1926. Its inventories are normal at the present time and its operating costs are lower than at any time since the pre-war period.

40 Steady improvement in the fundamental conditions underlying the heavy leather industry has been noted during the year 1926 and particular attention is directed to the fact that the stocks of finished sole leather

held by tanners, which reached a peak of 10,563,000 sides in April, 1922, had been reduced to the more normal figure of 2,627,000 sides on February 1, 1927, the latter being the lowest point reached since statistics have been available. There is, however, still room for further improvement in other directions.

Under date of October 1, 1926 there was submitted to the stockholders of the Company a "Plan for Readjustment of Share Capital" which was declared operative by the Managers, Messrs. Kuhn, Loeb & Company and Bankers Trust Company on February 25, 1927, on which date there had been deposited under said Plan 283,786 shares (more than 85%) of the Preferred stock and 308,636 shares (more than 77%) of the Common stock of the Company.

It is the opinion of the officers of your Company that the present and prospective earning capacity of the Company fully warrants the new capitalization provided for under the Plan.

Respectfully submitted,

HIRAM S. BROWN,
President.

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COMPARATIVE CONSOLIDATED PROFIT AND LOSS ACCOUNT
FOR THE YEARS ENDED DECEMBER 31ST, 1926, 1925 AND 1924

	Year 1926	Year 1925	Year 1924
10 Net Profits from Manu- facture and Sale of Hemlock, Union and Oak Sole Leather, Harness Leather and Oak Belting Butts; also Lumber, Logs and Forest Products, Glue, Grease and other mis- cellaneous products; Rail- road and other miscellane- ous net earnings.....	\$1,263,703.49	\$2,316,376.59	\$1,243,892.35
Income from Investments ..	231,216.09	231,638.00	110,008.50
	<u>1,494,919.58</u>	<u>\$2,548,014.59</u>	<u>\$1,353,900.85</u>
20 DEDUCT:			
Interest on			
Bonds \$812,010.00		1,082,938.60	1,838,207.50
Discount on			
Bonds 148,000.00	960,010.00		
	<u>534,909.58</u>	<u>\$1,465,075.99</u>	<u>*\$ 484,306.65</u>
Balance to Deficit.....	\$ 534,909.58	\$1,465,075.99	*\$ 484,306.65

30 The net earnings before providing for Interest and Discount on Bonds for each quarter of the current year are as follows:

Net Profit, Three Months ended March 31st, 1926.....	\$363,420.32
Net Loss, Three Months ended June 30th, 1926.....	*470,483.81
Net Profit, Three Months ended September 30th, 1926..	538,627.43
Net Profit, Three Months ended December 31st, 1926..	1,063,355.64
	<u>\$1,494,919.58</u>

* Loss.

40 * * * * *

The excess of Current Assets over all Liabilities, including bonds, has increased during the year by \$2,101,311.65 and now amounts to \$26,981,659.17.

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The Board takes pleasure in acknowledging the loyal and efficient services of the officers and employees of the several Companies.

On behalf of the Board of Directors.

HIRAM S. BROWN,
President. 10

New York,
March 22nd, 1927.

CERTIFICATE OF INDEPENDENT AUDITORS

*To the Stockholders of the
Central Leather Company:* 20

We have examined the books and accounts of the Central Leather Company and its Subsidiary Companies for the year ended December 31, 1926, and we certify that the annexed Balance Sheet and the relative Profit and Loss Account are correctly prepared therefrom and, in our opinion, fairly set forth the financial position of the combined companies at December 31, 1926 and the result of their operations for the year ended that date.

PRICE, WATERHOUSE & CO. 30

56 Pine Street, New York.
March 22nd, 1927.

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Exhibit A-1

CENTRAL LEATHER COMPANY
CONSOLIDATED BALANCE SHEET
DECEMBER 31ST, 1926

ASSETS

10	Property Account, including Timber Lands, Railroads, Tannery Plants and plants engaged in Lumber, Glue and other Allied Industrial Operations.....	\$21,749,057.10	
	Investments:		
	Central Leather Company, First Lien		
	Sinking Fund Bonds, at face value..	\$ 2,943,000.00	
	Other Investments	6,262,982.53	9,205,982.53
	Sinking Fund:		
20	Cash with Trustee.....	\$ 812,371.59	
	Accrued	344,597.21	1,156,968.80
	CURRENT ASSETS:		
	Inventories:		
	Leather in Stores, Lumber and other		
	Finished Products	\$ 7,752,952.72	
	Hides and Leather, Raw and in Proc-		
	ess, Bark, Extract and all other		
30	Materials	15,200,955.99	
		\$22,953,908.71	
	Accounts Receivable	\$5,217,103.33	
	Bills Receivable	575,123.28	
	Liberty Bonds	24,123.85	
	Call Loans	7,800,000.00	
	Cash in Banks and on hand	1,525,201.49	15,141,551.95
			38,095,460.66
	Deferred Charges to Profit and Loss.....		1,390,641.27
40	Deficit.....		18,520,064.01
			\$90,118,174.37

CENTRAL LEATHER COMPANY
CONSOLIDATED BALANCE SHEET
DECEMBER 31ST, 1926

LIABILITIES

Capital Stock:

*Preferred	\$33,299,050.00	
Common	39,701,030.50	\$73,000,080.50

First Lien Sinking Fund Six Per Cent
Bonds:

Issued	\$15,000,000.00	
Less, Retired Through Sinking Fund...	1,801,000.00	13,199,000.00

CURRENT LIABILITIES:

Accounts Payable	\$1,362,493.08	
Interest Accrued on Bonds	307,680.00	
Sinking Fund Accrual	344,597.21	2,014,770.29

RESERVES:

Fire Insurance	\$875,000.00	
Marine Insurance	100,000.00	
Liability Insurance	100,000.00	
Miscellaneous	829,323.58	1,904,323.58
		<u>\$90,118,174.37</u>

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Exhibit A-1

*Cumulative dividends are in arrears since April 1st, 1921.

CONSOLIDATED PROFIT AND LOSS ACCOUNT FOR YEAR
ENDED DECEMBER 31st, 1926

	1926	Corresponding Totals 1925
The Total Earnings of all Properties after deducting expenses incident to operations, including those for repairs and maintenance (\$845,307.44), depreciation (\$450,975.13) and taxes amounted to..	\$3,776,049.55	\$6,195,771.36
Less, Expenses and Losses of all Companies	2,512,346.06	3,879,394.77
	<u>\$1,263,703.49</u>	<u>\$2,316,376.59</u>
Add, Income from Investments.....	231,216.09	231,638.00
	<u>\$1,494,919.58</u>	<u>\$2,548,014.59</u>
DEDUCT:		
Interest on Bonds..... \$812,010.00		1,082,938.60
Discount on Bonds..... 148,000.00	960,010.00	
	<u> </u>	<u> </u>
Balance to Deficit.....	<u>\$534,909.58</u>	<u>\$1,465,075.99</u>

**Exhibit A-2—Extracts from Annual
Report for the Fiscal year ended
December 31, 1925.**

* * * * *

To the Stockholders of Central Leather Company:

The Annual Report of the operations of your Company for the calender year 1925, given here-
with, shows net profits after bond interest aggre-
gating \$1,465,075.99, practically all of which is the
result of leather operations as the income from the
lumber and railroad operations and from invest-
ments approximately covered the interest require-
ments. 10

During the year 1925, the Company was com-
pelled to incur expenditures for duplicate bond in-
terest, expenses in connection with the new bond
issue, and heavy expenditures in connection with
the readjustment of the Company's business, which
expenditures will not be incurred in subsequent
years and which aggregated several hundred thou-
sands of dollars. 20

On April 1, 1925, the Company's First Mortgage
5% Bonds, which matured on that date, were paid
out of the proceeds of the sale of the new issue of
\$15,000,000 Twenty-Year 6% First Lien Sinking
Fund Gold Bonds, the utilization of the Company's
surplus cash and \$1,500,000 borrowed money. 30
Principally as a result of the further liquidation
of the Company's surplus inventories, and to some
extent from operating profits, the borrowed
\$1,500,000 was promptly repaid, \$1,160,276.35 was
paid into the Sinking Fund for the retirement of
the new Twenty-Year 6% First Lien Sinking Fund
Gold Bonds, and the Company's cash balance (in-
cluding call loans) on December 31, 1925, was
\$6,583,229.47. 40

During the year 1925, some of the adverse conditions that have existed in the Heavy Leather industry for several years were further improved and they show every evidence of continued improvement, although progress is unavoidably slow.

- 10 Further progress has been made in improving the Company's organization and effecting substantial economies. This has not been done at the expense of quality or service, as every effort is being devoted to maintain the highest possible standards of production and service, upon which the good will of the Company has been built up.

Particular attention is directed to the following Notice which was mailed to the Stockholders of the Company under date of December 1, 1925:

- 20 *Special Announcement to Stockholders.*

"Following the lines of the Engineers' Report made in connection with the refunding of this Company's Bond Issue, which matured April 1, 1925, the officers of the Company, during the current year, have been carefully surveying the Company's physical properties and analyzing its other assets with a view to determining their sound values and utility for the current and future operations of the Company's business.

- 30 *As a result of this survey and analysis the officers of the Company have recommended and the Board of Directors has instructed that the book values of the Company's assets as of September 30, 1925, be reduced by adjustments aggregating \$7,407,078.44 to cover the writing off of unnecessary plants and the establishment of sound current values for the remaining plants and other assets of the Company.*
- 40 *These adjustments have no relation to, and*

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Exhibit A-2

will not affect, the operating results of the Company for the nine months ended September 30, 1925, as heretofore reported.

The balance Sheet of September 30, 1925, adjusted to reflect the above-mentioned reductions, shows that, after providing for all the liabilities of the Company and the Preferred Stock at par and accrued preferred dividends, there is a balance of \$9,807,370.46 which represents a book value of the Common Stock of \$24.70 per share, figured on a going-concern basis." 10

No further explanation of the necessity for the above action of the Directors need be given than the statement that the Company owned plants capable of producing two-thirds of the entire Heavy Leather consumption of the United States, whereas its volume of business aggregates only one-third. The effect on operating expenses of the attempt to operate, or keep in readiness for operation, this excessive plant capacity is obvious. The action of the Directors, as described in the above Notice, will materially improve operating conditions. 20

The Company's Balance Sheet as of December 31, 1925, given herewith, shows a deficit of \$19,054,973.59. In addition, the accumulated unpaid dividends on the Preferred Stock will, on April 1, 1926, aggregate a total of \$11,654,667.50. 30

The Company is now in a position to begin to realize profits at least equivalent to the present Preferred Stock dividend requirements, and the profits should materially improve, as the general conditions in the industry improve, but, from the standpoint of the Preferred Stockholders, it must be remembered that dividend payments cannot be resumed until the aggregate profits have wiped out 40

the deficit of \$19,054,973.59 (equivalent to over eight years' dividend requirements) and established a sufficient surplus to warrant dividend declarations and payments. From the Common Stockholder's standpoint, before he can expect a dividend, he must wait until the deficit is wiped out and all the accumulated dividends on the Preferred Stock have been paid.

It is obvious, therefore, that steps should be promptly taken by the Stockholders of the Company to remedy this situation.

Your Directors have been giving the matter serious consideration for several months, and they expect as soon as possible, to present to the Stockholders for their approval, a plan of capital readjustment.

Respectfully submitted,

HIRAM S. BROWN,
President.

March 23rd, 1926.

**Exhibit A-3—Extracts from Annual
Report for the Fiscal year ended
December 31, 1924.**

* * * * *

To the Stockholders of Central Leather Company:

The Annual Report of the operations of your Company for the calender year 1924, given herewith, shows net profits before bond interest aggregating \$1,353,900.85.

For the year 1924 the usual practice was followed of charging bond interest, aggregating \$1,838,207.50, on the entire \$36,764,150 of First

Mortgage 5% Bonds due April 1, 1925, thus producing a deficit in the Company's operations for the year 1924 of \$484,306.65.

It will be recalled that, beginning with the year 1913, your Company inaugurated a policy of annually setting aside a fund, taken principally from the proceeds of the timber operations, which fund has been used in the acquisition for the treasury of the Company's First Mortgage 5% bonds. As a result of this policy, a total principal amount of bonds aggregating \$18,128,100 was acquired up to and including December 31, 1924. The interest on these bonds has been set aside in a "Special Depreciation Fund" which aggregated a net amount of \$2,687,598.60 as of December 31, 1924. The "Special Depreciation Fund" has been and will be used to offset the capital depreciation resulting from the abandonment of certain surplus tanning and extract plants of the Company.

President Child's letter of February 19, 1924, accompanying the Annual Report for the year 1923, summarized the difficulties with which the Tanning Industry of the United States was contending. Some of these difficulties still exist but, during the year 1924, a material improvement in the general situation took place and your Company not only did its share in the effort to re-establish the industry on a fundamentally sound basis but also took certain necessary action in the re-adjustment of its own affairs, for example:

1st: The tremendous surplus supply of leather was reduced during the year to practically a normal basis.

2nd: The entire tanning industry of the United States suffered from an overcapacity in Tanning Plants. In order to relieve itself of the burden of carrying excessive tanning capac-

ity, for which no possible use exists now or prospectively, your Company has arranged to abandon plants having an aggregate tanning capacity of 4,000 hides per day.

10 3rd: In December of 1924, after several months of negotiations, a contract was signed with Messrs. Kuhn, Loeb & Co. and Bankers Trust Co. for the sale of a new issue of \$15,000,000 Twenty Year 6% First Lien Sinking Fund Gold Bonds to provide the necessary cash to refund the Company's 5% issue maturing April 1, 1925. The new bond issue was offered for public subscription December 15, 1924, and the interim certificates were actually delivered to the subscribers on January 19, 1925.

20 The new bond issue above described is secured by a Trust Indenture which specifically pledges the proceeds of the timber operations of your Company for the payment of the sinking fund and interest requirements, and the timber properties will be so operated that the net receipts therefrom should completely retire the \$15,000,000 Twenty Year 6% First Lien Sinking Fund Gold Bonds well within the date of their maturity.

30 The sinking fund and interest requirements of your Company having been provided for as above described, the expectation of dividends on the capital stock of your Company must be realized from profits resulting from the operation of the Company's leather business and income from its investments.

40 It is the opinion of the officers of your Company that the heavy-leather industry of the United States has turned the corner. Your Company's organization has been, and is continuing to be, reconstructed to as economical an operating basis

as possible so that it may be in a position to share in the reasonable profits which it is earnestly hoped the heavy-leather industry will realize.

Respectfully submitted,

HIRAM S. BROWN,

President. 10

February 17, 1925.

Exhibit A-4—Extracts from Listing Application of the United States Leather Company to the Committee of the New York Stock Exchange.

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PURPOSE OF ISSUE

The shares represented by the Voting Trust Certificates the listing of which is covered by this application have been issued pursuant to the Plan. As of June 30, 1926, accrued unpaid dividends on the Seven Per Cent. Cumulative Preferred Stock of the former Central Leather Company, of which the Company had outstanding \$33,299,050, par value, amounted to 36¾% and as of the same date the Company had a deficit, as shown by its books, amounting to \$19,647,077.08. The operations of the former Central Leather Company were approaching a more normal basis and the Company was in a strong cash position, but the Board of Directors felt that, because of the large deficit and the accumulated dividends on the Preferred Stock, a readjustment of the Company's capital structure was essential prior to any resumption of cash dividends. The Plan was promulgated and on Febru-

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Exhibit A-4

ary 25, 1927, notice declaring the Plan operative was published.

CAPITALIZATION OF PREDECESSOR COMPANIES
CENTRAL LEATHER COMPANY

10	Twenty-Year 6% First Lien Sinking Fund Gold Bonds, due January 1, 1945 (exclusive of Twenty-Year Bonds called for redemption on July 1, 1927)	\$8,146,000*
	Seven Per Cent. Cumulative Preferred Stock	33,299,050
	Common Stock	39,701,030

*In addition, \$3,592,000 of said Bonds were in treasury of Central Leather Company.

20 THE UNITED STATES LEATHER COMPANY

*Common Stock \$100,000

*All owned by Central Leather Company.

CAPITALIZATION OF NEW COMPANY

(After giving effect to retirement of Twenty-Year Bonds called for redemption on July 1, 1927, and exclusive of \$3,592,000 Twenty-Year Bonds in Treasury of New Company)

30	Twenty-Year 6% First Lien Sinking Fund Gold Bonds, due January 1, 1945	\$8,146,000
	7% Cumulative Prior Preference Stock	166,496 shares
	Class A Participating and Convertible Stock	249,743 shares
	Common Stock	647,753 shares†

†Includes 249,743 shares Common Stock reserved

40) for conversion, share for share, of Class A Stock.

*Exhibit A-4*TREATMENT OF STOCKS OF PREDECESSOR
COMPANIES

Stocks of Predecessor Companies	Stocks of New Company				
	Cash	7% Cumulative Prior Preference	Class A	Common	
Preferred, 1 share, exchangeable for \$5	\$5	½ share	¾ share	.....	10
Common, 1 share, exchangeable for .....	.....	.....	.....	1 share	

For further information with respect to the Plan, reference is made to the application to list certificates of deposit for the preferred and Common Stocks of the former Central Leather Company, A-7274, dated October 11, 1926.

There have been deposited under the Plan shares of the former Central Leather Company as follows:

Preferred Stock	301,078 shares	20
Common Stock	328,073 shares	

DESCRIPTION OF STOCKS OF NEW
COMPANY*Prior Preference Stock*

The 7% Cumulative Prior Preference Stock (hereinafter termed Prior Preference Stock) of the New Company is entitled to cumulative dividends from July 1, 1926, at the rate of seven per cent. per annum, and no more, payable quarterly, if and as declared by the Board of Directors before any dividends are paid on the Class A Participating and Convertible Stock (hereinafter termed Class A Stock) or the Common Stock. The Prior Preference Stock is redeemable at any time at the option of the Company, in whole or in part, at \$110 per share, together with all accrued unpaid dividends to

the date of redemption, whether or not earned or declared. In the event of liquidation or dissolution of the Company holders of the Prior Preference Stock will be entitled to receive \$100 per share and all accrued and unpaid dividends, whether or not earned or declared, before any distribution is made on the Class A Stock or the Common Stock. After such distribution all further amounts distributed will be payable to the holders of the Class A Stock and Common Stock, as hereinafter provided.

An annual sinking fund is provided for out of the net profits or earned surplus of the New Company sufficient to retire annually 5% of the maximum par value of Prior Preference Stock at any time outstanding. Payments to the sinking fund are to be made or provided for, if net profits or earned surplus are available, before any dividend payment on the Class A Stock or the Common Stock, but are not to be cumulative. Prior Preference Stock purchased by the New Company and cancelled shall be credited against the earliest sinking fund payment or payments due thereafter. Moneys in the sinking fund will be applied to the purchase of Prior Preference Stock (or to the purchase of voting trust certificates issued under the 7% Cumulative Prior Preference Stock Voting Trust Agreement) at not exceeding \$110 per share and accrued unpaid dividends or to the redemption by lot of Prior Preference Stock. All Prior Preference Stock so purchased or redeemed will be retired and cancelled and shall not be reissued.

Provision has been made that, as long as any Prior Preference Stock is outstanding, no funded debt and no stock ranking ahead of or on a parity with the Prior Preference Stock shall be authorized or issued, nor shall the New Company be a party

to any merger or consolidation with any other corporation except in each case upon the affirmative vote of the holders of two-thirds of the then outstanding Prior Preference Stock.

Class A Participating and Convertible Stock

After full provision for the dividend for the then current fiscal year and all accrued dividends on the Prior Preference Stock, and for sinking fund requirements for such year, the Class A Stock will be entitled to receive preferential dividends, payable annually, semi-annually or quarterly, if and as declared by the Board of Directors, up to \$4 per share per annum, in priority to any payment of dividends on the Common Stock. Such preferential dividends shall be non-cumulative, whether earned or not.

After dividends up to \$4 per share per annum have been paid on the Class A Stock in any fiscal year, or provided for, the Class A Stock will be entitled to participate equally with the Common Stock in dividends paid in such year (so that each share of Class A stock will receive as additional dividends the same amount as paid in dividends on each share of Common Stock) until the Class A Stock shall have received an additional amount of \$2 per share. Provision has been made so that, in case of any issue of additional Common Stock as a stock dividend or of any subdivision of the outstanding Common Stock into a greater number of shares, the aggregate amount thereafter payable as dividends on the Common Stock shall not, until the Class A Stock shall have received the additional amount of \$2 per share, exceed the amount which would have been so paid if such additional stock had not been so issued or the outstanding stock had not been so subdivided.

The Class A Stock is convertible at any time at the option of the holder into Common Stock, share for share. Stock so converted shall not be reissued.

- 10 In case of liquidation or dissolution of the New Company, after payment of \$100 a share together with accrued unpaid dividends on the Prior Preference Stock, two-thirds of all amounts distributable will be distributed among the holders of Class A Stock, provided, however, that, if any Class A Stock is retired, the portion so to be distributed among the holders of the Class A Stock shall be proportionately decreased. The remainder of all amounts so distributable shall be distributed among the holders of Common Stock.

- 20 Provision has been made that, so long as any Class A Stock is outstanding, no funded debt and no stock ranking ahead of or on a parity with the Class A Stock shall be authorized or issued, nor shall the New Company be a party to any merger or consolidation with any other corporation except in each case upon the affirmative vote of the holders of two-thirds of the then outstanding Class A Stock.

Common Stock

- 30 Subject to the participation rights of the Class A Stock as hereinbefore specified, the Common Stock is entitled to receive all amounts declared in dividends in any fiscal year after payment of, or provision for, the full dividends and sinking fund on the Prior Preference Stock and a dividend of \$4 per share on the Class A Stock for such year.

* * * * *

PROPERTIES

- 40 The properties owned by the New Company directly or through subsidiary companies, include the following:

Tanneries at Salamanca, N. Y.; Old Fort, N. C.; Iron Gate, Big Stone Gap, and Narrows, Va.; Marlinton, Paw Paw, Petersburg, Lost City, and Moorefield, W. Va.; Tomahawk, Wis; Chattanooga and Johnson City, Tenn.; Middleboro, Ky.; Cumberland, Md.; Arroyo, Clearfield, Coudersport, Curwensville, East Stroudsburg, Emporium, Falls Creek, Galetton, Instanter, Orvona, Manns Choice, Newport, Powell, Ridgway, Tunkhannock, Wilcox and Sheffield, Pa.; Comstock Park, Mich. and Kenosha, Wis. 10

Mills at Laquin, Master, Sheffield and Kinzua, Pa.; and Rib Lake, Wis.

Extract factories at Old Fort, N. C.; Big Stone Gap and Narrows, Va.; Chattanooga, Johnson City and Harriman, Tenn.

Machine shops at Ridgway and Sheffield, Pa. 20

Lands, growing bark and timber, and other real estate properties situated in Pennsylvania, Wisconsin, Virginia, West Virginia, Tennessee. These properties include 339,008 acres of land owned in fee; 991,921,429 feet growing sawing timber; also sundry chestnut wood, pulp wood, railroad ties, cedar posts, etc.

Glue works at Williamsport, Pa., and at South Milwaukee, Wis.

Railroads: All the outstanding Capital Stock of Tionesta Valley Railway Company; the lines owned by this company aggregate 76.41 miles of railroads and sidings, together with equipment. Also all the Capital Stock and \$724,000, principal amount, First Mortgage Bonds (total amount outstanding) of Susquehanna and New York Railroad Company; the lines owned by this company aggregate 70.13 miles of railroads and sidings together with equipment. Also all the Capital Stock of Clarion River Railway Company, which owns 13.12 miles of rail- 30 40

road and sidings, together with equipment. In addition subsidiary lumber companies own 176.97 miles of tram roads, together with equipment.

* * * * *

PRODUCTION

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The production of the former Central Leather Company during the last five years has been as follows:

LEATHER, INCLUDING SOLE, BELTING AND HARNESS

Pounds

1926.....	67,479,369
1925.....	76,333,559
20 1924.....	78,245,699
1923.....	125,606,974
1922.....	120,415,117

LUMBER

Feet

1926.....	165,358,015
1925.....	169,187,545
1924.....	125,188,996
30 1923.....	110,589,224
1922.....	110,083,261

	Glue (pounds)	Grease (pounds)	Tankage (pounds)
--	------------------	--------------------	---------------------

1926.....	2,893,671	4,000,958	1,243,371
1925.....	2,255,332	2,981,284	896,730
1924.....	2,645,323	3,335,893	902,880
1923.....	2,615,278	3,288,139	1,372,700
40 1922.....	3,199,213	3,998,112	1,167,180

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Exhibit A-4

RAILROADS

	Gross earnings (included in consolidated statement of earnings)	Net earnings	
1926.....	\$154,943.50	\$57,818.59	
1925.....	176,988.67	87,562.74	10
1924.....	107,943.82	30,899.92	
1923.....	113,111.16	9,275.99	
1922.....	54,800.62	(Loss) 94,864.89	

DIVIDENDS

No dividends were paid on the Preferred Stock of the former Central Leather Company since April 1, 1921, and no dividends on the Common Stock since August 1, 1920.

The Board of Directors of the New Company has declared a dividend of 7% on the 7% Cumulative Prior Preference Stock for the period from July 1, 1926, to June 30, 1927, payable on August 1, 1927, to holders of record on July 15, 1927. 20

DEPRECIATION AND DEPLETION

The depreciation policy of the former Central Leather Company was as follows:

Until January 1, 1926, no depreciation was figured on tanning properties, but these properties were kept up at 100% efficiency through constant improvements and repairs, which amounts were charged to income. Since January 1, 1926, a reserve for depreciation has been accrued monthly and charged to income on all properties of the former Central Leather Company and its subsidiaries at rates considered adequate by the officers. 30

The depletion policy of the former Central Leather Company was as follows:

To charge a rate per foot on timber cut, which would return capital invested in timber lands when all timber had been cut.

- 10 It is contemplated that the same policies with respect to depreciation and depletion will be followed by the New Company.

EMPLOYEES

The number of employees of the New Company and its subsidiary companies is approximately 4,986.

EARNINGS

- 20 *Central Leather Company and Subsidiaries†*

The earnings of the former Central Leather Company and Subsidiaries for the preceding ten years to 1926, inclusive, with interest charges, depreciation, depletion and Federal taxes, were as follows:

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40)

Year	Income before deducting depreciation and Federal Taxes	Net reduction through depletion (not representing cash outlay)	Net reduction of plant account through depreciation and abandoned plants (not representing cash outlay)	Federal income and profits tax	Interest on funded and floating debt	Net income
1917.....	\$23,001,071.21	\$519,984.40	\$160,569.52	\$6,077,455.03	\$1,838,207.50	\$14,404,852.76
1918.....	11,026,337.64	637,035.88	34,165.96	2,040,494.03	1,838,207.50	6,476,434.27
1919.....	25,321,463.36	1,340,387.64	942,296.98	2,193,606.96	1,838,207.50	19,006,964.28
1920.....	<i>17,744,313.17L</i>	1,571,864.36	443,585.33	500,000.00	2,168,450.14	<i>22,428,213.00L</i>
1921.....	<i>7,343,727.92L</i>	1,134,659.23	148,380.65*	.....	2,441,926.03	<i>11,068,693.83L</i>
1922.....	5,046,590.33	690,562.95	641,133.73*	.....	2,186,684.45	1,528,209.20
1923.....	<i>2,750,404.97L</i>	1,080,353.42	1,278,877.98*	.....	2,162,606.57	<i>7,272,242.94L</i>
1924.....	3,712,271.62	1,578,060.42	780,310.35*	.....	1,838,207.50	<i>484,306.65L</i>
1925.....	6,700,845.69	1,164,475.80	2,840,555.30*	.....	1,230,738.60	1,465,075.99
1926.....	3,074,583.35	1,128,688.64	450,975.13	.....	960,010.00	534,909.58

L = Loss

†Subsidiaries are companies 95% or more of whose stock outstanding is owned by Central Leather Company.

*Partially offset by application of special depreciation reserve instituted in 1913 and not included in earnings.

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Exhibit A-4

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CONSOLIDATED PROFIT AND LOSS ACCOUNTS FOR YEARS ENDED DECEMBER 31, 1926 AND DECEMBER 31, 1925, AND THREE MONTHS ENDED MARCH 31, 1927

	Year 1926	Year 1925	Three months ended March 31, 1927
Net profits from manufacture and sale of hemlock, union and oak sole leather, harness leather and oak belting butts; also lumber, logs and forest prod- ucts, glue, grease and other miscellaneous products; railroad and other miscellaneous net earnings	\$1,263,703.49	\$2,464,176.59	\$743,238.77
Income from investments	231,216.09	231,638.00	47,596.50
	<u>\$1,494,919.58</u>	<u>\$2,695,814.59</u>	<u>\$790,835.27</u>
Deduct:			
Interest on bonds	\$812,010.00	\$1,082,938.60	\$186,360.00
Discount on bonds	148,000.00	147,800.00	36,000.00
	<u>960,010.00</u>	<u>1,230,738.60</u>	<u>222,360.00</u>
Balance to deficit	<u>\$534,909.58</u>	<u>\$1,465,075.99</u>	<u>\$568,475.27</u>

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Exhibit A-4

SUBSIDIARY COMPANIES OF THE NEW COMPANY

Name of Company	State	Incorporated Date	Duration of Charter	Capital Stock			Shares held directly or indirectly
				Par value per share	Shares authorized	Shares outstanding	
The United States Leather Co. of Mass.	Mass.	Dec. 27, 1916	Perpetual	\$100	500	500	500
Union Tanning Co.	N. J.	June 27, 1905	Perpetual	100	1,000	1,000	1,000
Elk Tanning Co.	Penna.	May 1, 1905	Perpetual	100	120,000	120,000	120,000
N. R. Allens Sons Co.	Wis.	July 31, 1895	Perpetual	100	8,000	8,000	8,000
Central Pennsylvania Lumber Co.	Penna.	May 22, 1903	Perpetual	100	5,000	5,000	5,000
Rib Lake Lumber Co. of Delaware	Del.	Jan. 7, 1925	Perpetual	100	1,000	1,000	1,000
Keystone Glue Co.	Penna.	Oct. 11, 1906	Perpetual	100	5,000	5,000	5,000
Susquehanna & New York Railroad Co.	Penna.	May 26, 1903	Perpetual	100	12,745	12,745	†12,732
Tionesta Valley Railway Co.	Penna.	Feb. 17, 1904	Perpetual	100	5,000	5,000	5,000
Clarion River Railway Co.	Penna.	Dec. 17, 1889	Perpetual	100	1,200	1,200	1,200
Sheffield Water Co.	Penna.	Apr. 17, 1906	Perpetual	100	200	200	200
Western Hide & Fur Co.	Ark.	Aug. 9, 1907	Perpetual	100	250	250	130
N. R. Allen's Sons Leather Co.	Wis.	Feb. 21, 1907	Perpetual	100	50	50	50
Northeastern Coal Co.	Penna.	Jan. 12, 1907	Perpetual	100	250	250	250
Hilliard & Merrill, Inc., Preferred	Maine	Mar. 26, 1912	Perpetual	100	5,000	5,000	5,000
Hilliard & Merrill, Inc., Common	Maine	Mar. 26, 1912	Perpetual	No Par	100,000	100,000	99,392

†Reserve 13 shares to redeem Barclay Railroad stock.

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Exhibit A-4

OTHER STOCKS HELD BY THE NEW COMPANY*

Name of company	Capital Stock			Shares held by the New Company directly or indirectly
	Par value per share	Shares authorized	Shares outstanding	
Griess Pfleger Tanning Co.	\$80	50,000	50,000	31,691
Tanners Products Co.				4,340
Tanners Supply Co.				70¾
Kenosha Homes Co.				100
Kenosha Elks Association	25	.....	.....	300
Merrill Boom Co.				†
St. Louis Coliseum				†
Williamsport Improvement Co.				†
Manns-Owens Co.				†
American Manufacturers Consolidated, Inc.				†
Sellman & Co.				†
Elcoman Realty Co.				40

*These stocks are carried as investments.

†Book value of investment \$1.

Exhibit A-5—Extracts from the Certificate for 7% Cumulative Preferred Stock of Central Leather Company.

“This Certifies—GRUNTAL LILIENTHAL & Co.—to be entitled to ONE HUNDRED shares full-paid, of the par value of one hundred dollars each of the Preferred Stock of the Central Leather Company transferable only on the books of the said Company by the holder hereof in person or by duly authorized attorney upon surrender of this certificate properly indorsed. The holders of said Preferred Stock shall be entitled to receive or to have set apart out of the surplus or net profits of said Company as and when declared by its board of directors a dividend at the rate of, but never exceeding, seven per centum per annum, cumulative on all such Preferred Stock outstanding at the time which dividend shall be payable yearly or quarterly as the board of directors may from time to time fix and determine and before any dividend shall be set apart for or paid on the Common Stock. In case of the liquidation or dissolution or winding up (whether voluntary or involuntary) of the corporation, the holders of the Preferred Stock shall receive cash to the amount of the par value of such Preferred Stock, together with all accrued and unpaid dividends thereon (but no more) before any payment to the holders of the Common Stock. The rights of the holder hereof are expressly declared and agreed to be subject to the terms and provisions of the Certificate of Incorporation and By-Laws of the said Company and of any amendments of either of them which may hereafter be lawfully made. IN WITNESS WHEREOF said Company has caused its corporate seal to be hereunto affixed and this Certificate to be signed by its President, or one of its Vice-Presidents, and by its Treasurer, or one of its Assistant Treasurers.”

**Exhibit A-9—Plan of readjustment of
share capital, dated October 1,
1926.**

I. INTRODUCTORY STATEMENT.

10 Central Leather Company, a New Jersey corporation, has outstanding \$33,299,050 of 7% Cumulative Preferred Stock and \$39,701,030 of Common Stock. Accrued unpaid dividends on the Preferred Stock, as of June 30, 1926, amounted to 36¾%. The Company has a profit and loss deficit, amounting, as of June 30, 1926, to \$19,647,077, resulting from losses due to unsettled conditions in the leather industry after the war.

20 The management of the Company states that its operations are now approaching a more normal basis. The Company is in a strong cash position, but, because of the large deficit and the accumulated preferred dividends, a readjustment of the Company's capital structure is essential prior to any resumption of dividend payments.

30 In an endeavor to meet this situation the Board of Directors, after consultation with the Bankers of the Company, Messrs. Kuhn, Loeb & Co. and Bankers Trust Company, suggested the organization of committees to represent the holders of Preferred Stock and of Common Stock of the Company for the purpose of considering and recommending plans for the readjustment of the capitalization of the Company.

The following Plan has been formulated by such Committees and Kuhn, Loeb & Co. and Bankers Trust Company. Kuhn, Loeb & Co. and Bankers Trust Company have agreed to act as Managers. The Plan has been approved by the Board of Directors of the Company.

40 The Board of Directors, the Committees and the Managers believe that the Plan is in the interests

of both classes of stock, and recommend its acceptance by stockholders. Holders of Preferred Stock will benefit by receiving, in respect of each share of stock, a cash payment of \$5 and new Prior Preference Stock and Class A Stock (Voting Trust Certificates) together entitled to dividends up to \$6.50 per annum before any payment is made on the Common Stock, and to participating dividends up to \$1.50, a total of \$8 per annum in respect of each share of the present Preferred Stock, \$1 in excess of the maximum dividend on the present Preferred Stock. In addition they will have the right to control the Company by electing two-thirds of the directors, until the retirement of \$10,000,000 of Prior Preference Stock. Holders of Common Stock benefit by the elimination of the accumulated dividends on the Preferred Stock and in the event of liquidation or dissolution will have the right, after provision is made for the new Prior Preference Stock, to participate with the new Class A Stock in distribution of assets, to the extent provided in the Plan.

As used in this Plan for convenience of reference the following terms have the meanings below specified, respectively:

The term "Present Company" means Central Leather Company.

The term "New Company" comprehends any corporation to be formed or now existing which may be used for the purpose of carrying out the Plan.

The term "Agreement" means the Agreement hereto annexed.

The term "Plan" includes the annexed Agreement, unless the context shall otherwise require.

The term "Preferred Stockholders Committee" means the Committee representing the preferred

stockholders of the Present Company, as from time to time constituted. The term "Common Stockholders Committee" means the committee representing the common stockholders of the Present Company, as from time to time constituted. The term "Committees" means said two Committees.

10

II. CAPITALIZATION OF THE PRESENT COMPANY.

The capitalization of the Present Company as of June 30, 1926, is as follows:

	Twenty-Year First Lien Sinking	
	Fund Six Per Cent. Bonds, ma-	
	turing January 1, 1945	\$13,868,000
20	7% Cumulative Preferred Stock ..	33,299,050
	Common Stock	39,701,030
	Total	\$86,868,080

A balance sheet of the Present Company, as of June 30, 1926, is Exhibit A hereto.

III. PROPOSED METHOD OF READJUSTMENT.

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It is proposed to organize a new corporation under the laws of such state as the Managers and the Committees may approve, to acquire by purchase, consolidation or otherwise the properties or stock of the Present Company. If the Managers shall so determine, the Present Company or some other existing corporation may be utilized as the New Company. The New Company is to issue its stock in lieu of or in exchange for the stock of the Present Company as hereinafter provided and, if

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it acquires the properties of the Present Company, is to assume the First Lien Bonds and other in-

debtedness of the Present Company outstanding at the consummation of the Plan.

IV. PROPOSED CAPITALIZATION OF NEW COMPANY.

Assuming the exchange of the entire stock of the Present Company for stock of the New Company as contemplated by this Plan and the acquisition by the New Company of the properties of the Present Company, the capitalization of the New Company as of June 30, 1926, would be as follows:

Twenty-Year First Lien		
Sinking Fund Six Per		
Cent Bonds, maturing		
January 1, 1945	\$13,868,000*	10
7% Cumulative Prior		20
Preference Stock	16,649,525	
Class A Participating and		
Convertible Stock with-		
out par value (Preferred		
Dividend \$4 non-cumu-		
lative)	249,743 shares	
Common Stock, without		
par value	397,010 shares†	

V. TREATMENT OF STOCKS OF PRESENT COMPANY.

Holders of preferred stock of the Present Company will be entitled to receive, upon the consum-

*On June 30, 1926, there was \$697,703.58 in cash in the sinking fund for these bonds. The Present Company had in its treasury, on September 23, 1926, \$1,927,000 of the above bonds. The Board of Directors has determined to use available cash for the purchase and retirement of bonds, as market conditions warrant, so as to reduce the outstanding bonds to \$10,000,000.

†Additional common stock will be authorized to provide for the conversion of the Class A stock.

mation of the Plan, for each share of such preferred stock

\$5 in cash,

\$50 par value ($\frac{1}{2}$ share) 7% Cumulative
Prior Preference Stock of the New
Company,

10 $\frac{3}{4}$ of a share of Class A Participating and
Convertible Stock of the New Company.

Holders of common stock of the Present Company will be entitled to receive for each share of such common stock one share of common stock of the New Company.

Voting Trust Certificates will be delivered in respect of all stock (See VIII, below).

20 Scrip certificates, non-dividend bearing, but exchangeable, in amounts aggregating one or more full shares, for voting trust certificates, will be issued for fractional amounts of stock.

VI. DESCRIPTION OF STOCKS OF NEW COMPANY.

PRIOR PREFERENCE STOCK.

30 The Prior Preference Stock of the New Company will be entitled to cumulative dividends from July 1, 1926, at the rate of seven per cent per annum, and no more, payable quarterly, if and as declared by the Board of Directors, before any dividends are paid on the Class A Stock or the Common Stock. The Prior Preference Stock is to be redeemable at any time at the option of the Company, in whole or in part, at \$110 per share, together with all accrued unpaid dividends to the date of redemption, whether or not earned or declared. In the event of liquidation or dissolution
40 of the Company holders of the Prior Preference

Stock will be entitled to receive \$100 per share and all accrued and unpaid dividends, whether or not earned or declared, before any distribution is made on the Class A Stock or the Common Stock. After such distribution all further amounts distributed will be payable to the holders of the Class A Stock and Common Stock, as hereinafter provided. 10

An annual Sinking Fund is to be provided for out of the earnings or earned surplus of the New Company sufficient to retire annually five per cent of the maximum par value of Prior Preference Stock at any time outstanding. Payments to the Sinking Fund are to be made or provided for, if earnings or earned surplus are available, before any dividend payment on the Class A Stock or the Common Stock, but are not to be cumulative. Prior Preference Stock purchased by the New Company and cancelled shall be credited against amounts thereafter due to the sinking fund. Moneys in the sinking fund will be applied to the purchase of Prior Preference Stock at not exceeding \$110 per share and accrued unpaid dividends or to the redemption by lot of Prior Preference Stock. All Prior Preference Stock so purchased or redeemed will be retired and cancelled and shall not be reissued. 20 30

Provision will be made that, as long as any Prior Preference Stock is outstanding, no funded debt and no stock ranking ahead of or on a parity with the Prior Preference Stock shall be authorized or issued, nor shall the New Company be a party to any merger or consolidate with any other corporation except in each case upon the affirmative vote of the holders of two-thirds of the then outstanding Prior Preference Stock. 40

CLASS A PARTICIPATING AND CONVERTIBLE STOCK.

After full provision for the dividend for the then current fiscal year and all accrued dividends on the Prior Preference Stock, and for sinking fund requirements for such year, the Class A Stock will be entitled to receive dividends, payable annually, semi-annually or quarterly, if and as declared by the Board of Directors, up to \$4 per share per annum, in priority to any payment of dividends on the Common Stock. Such dividends shall be non-cumulative, whether earned or not.

After dividends up to \$4 per share per annum have been paid on the Class A Stock in any fiscal year, or provided for, the Class A Stock will be entitled to participate equally with the Common Stock in dividends paid in such year (so that each share of Class A Stock will receive as additional dividends the same amount as paid in dividends on each share of Common Stock) until the Class A Stock shall have received an additional amount of \$2 per share.* Provision will be made so that, in case of any issue of additional Common Stock as a stock dividend, the aggregate amount thereafter payable as dividends on the Common Stock shall not, until the Class A Stock shall have received the additional amount of \$2 per share, exceed the amount which would have been so paid if such additional stock had not been so issued.

The Class A Stock will be convertible at any time at the option of the holder into Common Stock, share for share. Stock so converted shall not be reissued.

*The participating feature is so adjusted that the dividends payable on the stocks offered for each share of preferred stock of the Present Company (including the Class A participating dividend) amount to \$8 per year, one per cent. in excess of the dividend rate on the present preferred stock.

In case of liquidation or dissolution of the New Company, after payment of \$100 a share together with accrued unpaid dividends on the Prior Preference Stock, two-thirds of all amounts distributable will be distributed among the holders of Class A Stock, provided, however, that, if any Class A Stock is retired, the portion so to be distributed among the holders of the Class A Stock shall be proportionately decreased. The remainder of all amounts so distributable shall be distributed among the holders of Common Stock. 10

Provision will be made that, so long as any Class A Stock is outstanding, no funded debt and no stock ranking ahead of or on a parity with the Class A Stock shall be authorized or issued, nor shall the New Company be a party to any merger or consolidate with any other corporation except in each case upon the affirmative vote of the holders of two-thirds of the then outstanding Class A Stock. 20

COMMON STOCK.

Subject to the participation rights of the Class A Stock as hereinbefore specified, the Common Stock will be entitled to receive all amounts declared in dividends in any fiscal year after payment of, or provision for, the full dividends and sinking fund on the Prior Preference Stock and a dividend of \$4 per share on the Class A Stock for such year. 30

VII. BOARD OF DIRECTORS AND VOTING POWER OF STOCK.

The first Board of Directors shall be named by the Committees, two-thirds of the members thereof by the Preferred Stockholders Committee and one-third of the members thereof by the Common Stockholders Committee. 40

Successors to the first Board of Directors shall be elected by the stockholders. Provision will be made so that two-thirds of the members of the Board of Directors of the New Company will be elected by the holders of the Prior Preference Stock and Class A Stock, voting together, and the remain-
10 ing members of the Board will be elected by the holders of the Common Stock, provided, however, that at any election of Directors occurring after Prior Preference Stock to the amount of \$10,000,000 par value shall have been retired, if full dividends shall have been paid on the Prior Preference Stock for all quarterly dividend periods ended prior to such election and dividends to the amount of \$4 a share shall also have been paid upon the Class A Stock for the fiscal year immediately preceding
20 such election, then the holders of the Common Stock shall have the right to vote share for share with the holders of Prior Preference Stock and Class A Stock for the election of Directors; otherwise the Directors shall be elected as above provided.

In all other respects all classes of stock will have equal voting power, subject to the requirements of law and the provisions of the Certificate of Incorporation of the New Company, as herein provided.

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VIII. VOTING TRUSTS.

All Prior Preference Stock and Class A Stock of the New Company issuable hereunder will be placed in Voting Trusts under each of which Messrs. Frank Altschul, Gayer G. Dominick and Charles S. Haight will be named as Voting Trustees. Such Voting Trusts will be for a period of ten years or such shorter period as the Preferred
40 Stockholders Committee may determine. The Common Stock of the New Company issuable hereunder

will also be placed in a Voting Trust, under which Messrs. Andrew J. Miller, Samuel L. Fuller, and Henry Rogers Winthrop will be named as Voting Trustees. Such Voting Trust will be for a period of ten years or such shorter period as the Common Stockholders Committee may determine.

Any reference to stock or stock certificates of the New Company herein shall, unless the context otherwise requires, be deemed to mean Voting Trust Certificates representing such stock. 10

IX. SPECIAL PROVISIONS FOR CERTIFICATE OF INCORPORATION OF NEW COMPANY.

Provision shall be made in the certificate of incorporation of the New Company to the following effect, in substance: 20

1. That the New Company, in the uncontrolled discretion of its Board of Directors, shall have power to sell or otherwise dispose of any of the property of the New Company, which the Board shall deem non-essential for the conduct of the business of the New Company;

2. That the New Company shall not sell or otherwise dispose of, or in any manner liquidate, its entire business and assets, except with the approval of the holders of two-thirds of the outstanding shares of Prior Preference Stock and Class A Stock, taken together, and two-thirds of the outstanding shares of Common Stock; and 30

3. That the Board of Directors shall have the right, in its uncontrolled discretion, to use surplus funds of the New Company to purchase its securities, in the market or otherwise, 40

- 10 for the purposes of cancellation and retirement; provided, however, that no Prior Preference Stock shall be so purchased (except through the sinking fund) so long as any of the First Lien Bonds of the Present Company remain outstanding, and no stock of any class shall be so purchased so long as any stock entitled to priority thereover remains outstanding, except that scrip for stock of any class may be purchased at any time in order to eliminate fractional shares.

X. METHOD OF PARTICIPATION IN PLAN.

- 20 Holders of Preferred Stock or Common Stock of the present Company may become entitled to the benefits of the Plan, subject to the provisions thereof, by depositing the certificates for their stock, duly endorsed in blank, or accompanied by transfer powers in blank duly executed, with BANKERS TRUST COMPANY, Depositary, at its office, No. 14 Wall Street, New York City, or with VERMEER & Co., Sub-Depositary in Amsterdam, Holland, on or before November 15, 1926, or such later date as the Managers may prescribe. Certificates of deposit will be issued for all stock so deposited.
- 30 Application will be made to the New York Stock Exchange for listing such certificates of deposit.

XI. DECLARING PLAN OPERATIVE.

- 40 It is contemplated that the Plan will not be declared operative unless substantially all outstanding stock of the Present Company, of both classes, is deposited hereunder. The Managers, however, may declare the Plan operative at any time, irrespective of the amount of stock of either class deposited.

XII. CONSTRUCTION, MODIFICATION AND ABANDONMENT OF PLAN.

The Managers and the Committees may construe the Plan and Agreement, and the construction thereof or action thereunder as determined by the Managers and the Committees shall be final and conclusive. The Managers and the Committees may supply any defect or omission or reconcile any inconsistency in such manner and to such extent as may be necessary in their judgment to carry out the Plan effectively. 10

The Managers shall have full power, with the approval of the Committees and of the Board of Directors of the Present Company, to modify the Plan, whether or not theretofore declared operative. If any such modification shall in the judgment of either Committee adversely affect depositors of the class represented by such Committee, such depositors shall be given an opportunity to withdraw as provided in the Agreement. The Managers shall have full power, with the approval of the Committees, to abandon the Plan at any time. 20

XIII. MANAGERS.

The Managers will be entitled to exercise all the usual powers of Managers as is more fully provided in the Agreement. The compensation of the Managers and the Committees and their counsel shall be fixed by the Board of Directors of the Present Company. All other compensations payable under the Plan will be fixed by the Managers, and approved by the Board of Directors of the Present Company. All compensations and approved expenses in connection with the readjustment will be paid by the New Company or, if the Plan is not consummated, by the Present Company. 30 40

XIV. GENERAL PROVISIONS.

There are annexed hereto, as Exhibit A, a consolidated balance sheet of the Present Company as of June 30, 1926, and, as Exhibit B, a consolidated profit and loss account of the Present Company for
10 the year ended December 31, 1925. The valuations to be placed upon the assets of the New Company on its books will be subject to the approval of its Board of Directors.

The statements and estimates contained in the Plan and in the accompanying balance sheet and profit and loss account have been compiled from sources believed to be trustworthy, but no statement, estimate or explanation contained in the Plan or in the Agreement or in any circular or
20 advertisement issued or which may be hereafter issued by the Managers or by either Committee is intended or is to be accepted as a warranty or as a representation or condition of deposit under or assent to the Plan or the Agreement, and no defect or error shall release any deposit under the Plan, or affect or release any assent thereto or payment made or action taken pursuant thereto, or in any manner subject the Managers or either Committee or any member thereof to any liability, and
30 each depositor becomes such with the understanding as set forth above.

Neither Kuhn, Loeb & Co. nor Bankers Trust Company nor either Committee nor any member thereof nor any member of the firm of Kuhn, Loeb & Co. nor any director of the Present Company shall incur any personal liability for any action taken or suffered hereunder or in connection herewith, except for wilful malfeasance.

Except as otherwise specifically stated, any and
40 all statements respecting the financial position of the New Company and the new stock are for con-

venience based upon the assumption that all of the stock of the Present Company will become subject hereto and that the New Company will acquire the properties of the Present Company. Such statements do not take into account any adjustments or changes that may be made in the exercise of the various powers conferred by the Plan and Agreement. 10

EXHIBIT A.

CENTRAL LEATHER COMPANY Consolidated Balance Sheet—June 30th, 1926

ASSETS

Property Account including Timber Lands, Railroads, Tannery Plants and plants engaged in Lumber, Glue and other allied Industrial Operations	\$22,495,753.08	20
Investment	6,627,524.32	
Sinking Fund—Cash with Trustee	679,703.58	
<i>Current Assets:—</i>		
<i>Inventories:</i>		
Leather in Stores, Lumber and other Finished Products	\$10,496,467.26	
Hides and Leather, Raw and In Process, Bark, Extract and all Other Materials	17,110,619.21	
	<u>\$27,607,086.47</u>	30
Accounts Receivable	3,641,238.17	
Bills Receivable	550,681.30	
Liberty Bonds	24,123.85	
Call Loans	6,050,000.00	
Cash in Banks and On Hand	1,608,642.17	39,481,771.96
Deferred Charges to Profit and Loss	1,474,279.76	
DEFICIT	19,647,077.08	
	<u>\$90,406,109.78</u>	40

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Exhibit A-9

LIABILITIES

<i>Capital Stock:</i>			
	Preferred	\$33,299,050.00	
	Common	39,701,030.50	\$73,000,080.50
First Lien Sinking Fund 6% Bonds			
	Issued	\$15,000,000.00	
10	Less:		
	Retired through Sinking Fund	1,132,000.00	13,868,000.00
<i>Current Liabilities:—</i>			
	Accounts Payable	\$ 810,835.58	
	Interest Accrued on Bonds	416,040.00	
	Discount Accrued on Bonds	99,722.91	1,326,598.49
<i>Reserves:—</i>			
	Fire Insurance	\$ 993,722.08	
	Marine Insurance	101,290.27	
	Liability Insurance	142,040.30	
	Miscellaneous	974,378.14	2,211,430.79
20			
			\$90,406,109.78

EXHIBIT B.

CONSOLIDATED PROFIT AND LOSS ACCOUNT FOR
YEAR ENDED DECEMBER 31st, 1925

The total earnings of all properties after deducting expenses incident to operations, including those for repairs and maintenance (\$1,495,070.37), and taxes amounted to			\$6,195,771.36
30	Less Expenses and Losses of all Companies		3,879,394.77
Add Income from Investments			\$2,316,376.59
			231,638.00
			\$2,548,014.59
DEDUCT:			
	Interest on Bonds		\$1,082,938.60
	Balance		\$1,465,075.99

40 NOTE: Operations of the Present Company for the first half of the year 1926 did not show a profit, but the management believes that the remainder of the year will produce more satisfactory results.

AGREEMENT dated October 1, 1926, between KUHN, LOEB & Co. and BANKERS TRUST COMPANY (hereinafter called the Managers), as Managers under a Plan for Readjustment of Share Capital of Central Leather Company, a New Jersey corporation, dated October 1, 1926, parties of the first part, GAYER G. DOMINICK, 10
FRANK ALTSCHUL, DEWEES W. DILWORTH, CHARLES S. HAIGHT, HAROLD M. LEHMAN and MAX J. H. ROSSBACH, as a Committee for the holders of Preferred Stock of Central Leather Company (hereinafter called the Preferred Stockholders Committee), parties of the second part, ANDREW J. MILLER, SAMUEL L. FULLER and HENRY ROGERS WINTHROP, as a Committee for the holders of Common Stock of Central Leather Company (hereinafter called the Common Stockholders Committee), parties of the 20
third part, and holders of stock of Central Leather Company who shall become parties to said Plan and this Agreement as hereinafter provided, and holders of certificates of deposit issued under said Plan and this Agreement (hereinafter collectively called Depositors), parties of the fourth part.

WHEREAS the Committees hereinabove referred to and the Board of Directors of Central Leather Company have approved the Plan and recommended its adoption by the holders of stock of Central Leather Company and have requested the parties of the first part, as Managers, acting as provided in this Plan and Agreement, to endeavor to consummate the Plan: 30

NOW, THEREFORE, in consideration of the premises and the mutual benefits expected to be derived from the performance hereof and of the 40

conditions and promises herein contained and for other valuable considerations, the parties hereto agree, each of the Depositors agreeing with each of the other Depositors and with the Managers and the Committees as follows:

- 10 **FIRST:** The Plan is and shall be taken to be a part of this Agreement with the same effect as though each and every provision thereof were embodied herein and the Plan and this Agreement shall be read and construed as parts of one and the same instrument. In case of any inconsistency between the provisions of this Plan and Agreement, the provisions of this Agreement shall govern. The terms used herein, except as herein otherwise expressly provided, shall have the meanings respectively specified on page 1 of the Plan.
- 20

SECOND: Stock of the Present Company may be deposited under or become subject to this Plan and Agreement upon the terms and conditions stated herein and in the Plan. All stock certificates deposited must be duly indorsed in blank for transfer or accompanied by assignments in blank duly executed. The Managers may require signatures to be satisfactorily guaranteed.

- 30 **THIRD:** Holders of Preferred Stock or Common Stock of the Present Company may become parties to this Agreement, subject to the provisions hereof, by depositing certificates for said stock on or before November 15, 1926, or such later time as the Managers may prescribe, with Bankers Trust Company, Depositary, at its office No. 14 Wall Street, New York City, or with Vermeer & Co., Sub-Depositary, Amsterdam, Holland. Certificates of Deposit in such form as the Managers may prescribe
- 40 will be issued in respect of all stock so deposited.

The Managers may in their discretion from time to time appoint additional Depositaries or Sub-Depositaries with whom stock may be deposited. In that event the terms "Depositary" and "Sub-Depositary" wherever used in this Plan and Agreement shall include any such additional Depositaries or Sub-Depositaries as the case may be. 10

FOURTH: Holders of stock who do not become parties hereto in the manner herein provided, and within the period fixed therefor, will not be entitled to deposit their stock, or to become parties to this Agreement, or to share in the benefits of this Plan and Agreement, and shall acquire no rights hereunder, or under the Plan, except upon obtaining the express written consent of the Managers, and the Managers shall have full power in their discretion from time to time, and in general or in particular instances, and upon such general or special terms and conditions as they may determine, to withhold or give such consent, to extend the time for making any deposits under this Plan and Agreement of any class of stock or of any stock of any class, or to admit as parties to this Agreement and to participation in this Plan and Agreement, as Depositors hereunder, the holders of any stock without the actual deposit of the same; 20 30 and all holders of stock so becoming parties hereto shall be embraced within the term Depositors whenever used in this Agreement.

FIFTH: All Depositors, except as herein otherwise provided, or as may be otherwise determined by agreement between any Depositor and the Managers, shall receive certificates of deposit in form to be prescribed or approved by the Managers and the Committees and the holders of such certificates shall be entitled (subject to any provisions 40

contained in such certificates) to the rights and benefits, and only to the rights and benefits, specified in this Plan and Agreement as accruing to the holders of stock of the class represented by such certificates, respectively, or granted by the Managers pursuant to the powers conferred upon them, but only upon compliance with the terms and conditions imposed by this Plan and Agreement.

Unless otherwise determined by the Managers generally or in particular instances, certificates of deposit shall be transferable subject to the terms and conditions of this Plan and Agreement and in such manner and on such conditions as the Managers shall approve, and, upon such transfer, all rights of the transferor under this Plan and Agreement and in respect of the deposited stock represented by the certificate of deposit transferred, and all rights under such certificate of deposit, shall pass to the transferee, and the transferee and holder of such certificate of deposit shall, for all purposes, be substituted in place of the prior holder, subject to this Plan and Agreement. Each such certificate of deposit may be treated by the Managers and by the Depositary and Sub-Depositary as a negotiable instrument, and the record holder for the time being of any certificate of deposit shall be deemed to be the absolute owner thereof and of all rights of the original Depositor of the deposited stock in respect of which the same was issued, and neither the Depositary nor the Sub-Depositary nor the Managers shall be affected by any notice to the contrary.

Upon compliance with all the terms and conditions of this Plan and Agreement and of their certificates of deposit, Depositors shall be entitled to receive, upon the consummation of the Plan and upon surrender of their certificates of deposit in negotiable form or accompanied by transfers in

blank duly executed, Voting Trust Certificates for stocks of the respective classes of the New Company (but only as and when issued and ready for delivery) and any cash to which they shall respectively be entitled pursuant to the terms and provisions of this Plan and Agreement.

All transferees of certificates of deposit, as well 10
as the original holders of certificates of deposit, shall be embraced within the term Depositors whenever used herein; and the term Depositor or the designation holder of a certificate of deposit or certificate holder or similar designation, whenever used herein, is intended and shall be construed to include not only persons acting in their own right, but also trustees, guardians, committees, agents and all persons acting in a representative or fiduciary capacity, and those represented by or claiming 20
under them, and partnerships, associations, stock companies and corporations. No rights under this Plan and Agreement shall accrue in respect of any stock of the Present Company unless and until the same shall have been subjected to the control of the Managers and to the operation of this Plan and Agreement as herein provided.

SIXTH: Except as otherwise provided herein, all 30
stock deposited hereunder or in any manner becoming subject hereto shall be held in escrow by the Depositary or the Sub-Depositary, and neither title thereto nor any interest therein shall pass to the Managers, but shall remain in the respective Depositors, unless and until the Managers shall have taken title to such stock as hereinafter provided. The Managers at any time in their discretion may take title to any or all of the deposited stock, or may cause such title to be taken by their nominee or nominees or by the New Company, by filing with 40
the Depositary a notice stating that the Managers

have determined to take title to the stock specified in such notice, or to cause such title to be taken by their nominee or nominees or by the New Company. Immediately upon such filing of such notice, legal title to such stock so specified shall forthwith pass from the respective Depositors to and vest in
10 the Managers or their nominee or nominees, or the New Company, as the case may be, and thereupon the Managers or their nominee or nominees or the New Company, as the case may be, shall be vested with the legal title to and all the rights, power and authority of absolute owner of all such stock so specified.

SEVENTH: Each and every Depositor hereby requests the Managers to endeavor to carry the Plan
20 into practical operation in its entirety or in part, to such an extent and in such manner and with such additions, exceptions and modifications as the Managers shall deem to be for the best interests of the Depositors. Each and every holder of stock in any manner by deposit thereof or otherwise assenting to this Plan and Agreement, does by such assent, for himself and not for any other of them, agree that such stock shall be held in escrow by the Depositary or Sub-Depositary, subject to the order
30 of the Managers, and that the Managers at any time in their discretion may take, or cause to be taken, title to any or all such stock in the manner and with the effect provided in the foregoing Article Sixth. Each and every Depositor for himself and for each and every of his successors in interest, in respect of any and all of the deposited stock, hereby constitutes the Managers his true and lawful attorneys and proxies irrevocable, with full power of substitution, in his name or in the name
40 of the Managers or otherwise, as the Managers may determine, to do any and all acts and things which

the Managers may deem necessary or appropriate for the purpose of carrying out this Plan and Agreement in whole or in part. The Depositors respectively agree at any time and from time to time, on demand of the Managers, to execute and deliver any and all further transfers, assignments, authorizations, powers or writings required for vesting the ownership of such stock in the Managers, their nominee or nominees or the New Company. Without prejudice to the general power and authority herein granted, holders of stock assenting in any manner to this Plan and Agreement and the Depositors hereby severally irrevocably authorize and empower the Managers, and at their election either before or after this Plan and Agreement shall become or be declared operative, to transfer and/or assign any and all deposited stock into the name of the Managers or into the name of their nominee or nominees or into the name of the New Company; to procure or consent to any corporate action by the Present Company or any of its subsidiary or affiliated companies; to sign and file any written consent or instrument required or permitted by law to be signed or filed; to demand, receive and collect all moneys that may be payable in respect of any deposited stock for dividend or otherwise; to take or institute, or cause to be taken or instituted, or to become parties to, or exercise control over, all proceedings, legal or otherwise, to give such directions, execute such papers and do or cause to be done such acts as the Managers may consider judicious to protect the rights and interests of the Depositors, or in which the Depositors may be interested, or for any of the purposes of this Plan and Agreement; to discontinue, or cause or consent to the discontinuance of, any actions or legal proceedings whether instituted by the Managers or by others; to settle or compromise in whole or in part

- any litigation now or at any time existing or threatened, with full power to make any and all arrangements for decrees or orders for facilitating or hastening the course of litigation, or in any way promote the purposes of this Plan and Agreement; to call or waive notice of, and to attend and, either in
- 10 person or by proxy, to vote at any and all meetings of stockholders of any corporation however convened; to purchase or sell at such prices as they shall see fit, or otherwise deal in or with, any stock of the Company not deposited hereunder; for the purpose of carrying out the Plan, to vote, or cause to be voted any stock deposited hereunder for any amendment of the Certificate of Incorporation or By-Laws of the Present Company, or for any change in the par value of its stock of either or both classes,
- 20 or for the change of such stock, of either or both classes, into stock without par value, or for the liquidation of the Present Company and the transfer of its assets to the New Company, or to give consent, in respect of any of the deposited stock, for any of the purposes aforesaid; and to use for any such purpose any stock contemplated by this Plan and Agreement and not specifically required by this Plan and Agreement to be used for other purposes, or any moneys coming into their possession or subject to their control; to apply for the
- 30 listing of or cause to be listed upon the New York Stock Exchange and elsewhere any of the certificates of deposit and/or any of the new stocks contemplated by the Plan; to pay the expenses of any such application or listing and any taxes, fees or charges in connection therewith; to pay or discharge any taxes, fees or governmental charges, domestic or foreign, necessary or expedient for or in connection with the deposit, assignment or transfer under this Plan and Agreement, or in pursu-
- 40 ance thereof, of any stock, and any taxes, fees or

charges imposed by any public authority wherever situated, domestic or foreign, in respect of the authorization, creation, issue or distribution of any of the new stock or otherwise in connection with the carrying out of this Plan and Agreement; and from time to time and upon such terms and conditions as the Managers may determine, to borrow money for any of the purposes of this Plan and Agreement.

EIGHTH: The Managers, with the approval of the Committees, may determine the method by which the readjustment is to be carried out. The Managers, with the approval of the Committees, may procure the organization of one or more new companies whenever and under the laws of such state or states or foreign countries as they may determine, or may adopt or use the Present Company or any existing company (including any subsidiary of the Present Company), may cause any company so used to be recapitalized, may cause to be made such consolidations, mergers, leases, sales or other arrangements, and may make such conveyances or transfers of any stock acquired by the Managers, and take such other steps as the Managers may deem proper for the purpose of creating the new securities provided for in the Plan and carrying out all or any of the provisions thereof. They may cause the ownership of all or any property of the New Company to be either a direct ownership or ownership through bonds or shares of stock, or both, of any other company. The Managers, with the approval of the Committees, may determine the form of all stocks, charters, certificates or articles of incorporation, by-laws, agreements and certificates and all other instruments at any time to be executed, issued, filed or entered into in connection with carrying out the Plan and, with like approval,

- may determine, subject to legal requirements, the respective amounts at which Class A Stock and Common Stock shall be carried on the books of the New Company. The Managers with the approval of the Committees and the Board of Directors of the New Company may determine the respective
- 10 values at which the assets to be acquired by the New Company are to be carried on its books. The Managers may make equitable provision for any case of lost, stolen or destroyed stock certificates or certificates of deposit, and may provide for and make such issues of fractional scrip as shall be necessary appropriately to represent any fractional interest in the new stock, and may in their discretion settle for and adjust any such fractional interests in cash, and may issue or cause to be
- 20 issued temporary or interim certificates representing new stocks. They may also in their discretion set apart and hold in trust, or place in trust with any bank or trust company, any part of the new stocks to be issued, and cash which may be received from sales of new stocks, or otherwise, as they may deem judicious for the purpose of securing the application thereof for any of the purposes of this Plan and Agreement. The Managers may receive and dispose of, or allow to be received or disposed
- 30 of by any other person, firm or corporation, in accordance with any of the provisions of the Plan and Agreement, the new stocks to be created, and may vote or cause or allow any person, firm or corporation to vote upon or consent in respect of any or all stocks until the same shall have been transferred or distributed as contemplated in the Plan to those entitled ultimately to receive the same. The Managers may effect such mergers or consolidations of subsidiary, affiliated or other companies constituting a part of the properties and
- 40 assets of the Company or of its subsidiary or affili-

ated companies as they may deem advisable, and may organize or utilize one or more subsidiary or affiliated companies for the purpose of acquiring or holding any properties or securities subject to the readjustment. The Managers, for the purposes of carrying out this Plan and Agreement, may, at public or private sale, or otherwise, and at such price or prices and upon such terms and conditions as they may in their discretion determine, subject to the approval of the Board of Directors of the New Company, dispose of any stock of the New Company left in their hands because of any failure to make deposits hereunder or for any other reason, or they may use such stock for the purpose of carrying out the readjustment in such manner as they may deem expedient.

NINTH: The Managers shall be the sole and final judges as to whether and when a sufficient amount of stock of each class shall have been deposited under this Plan and Agreement, or otherwise shall have assented thereto, to render it advisable to declare the Plan operative, and their determination in that respect shall be final, binding and conclusive upon all Depositors. Notice of such determination shall be given as provided in Article Twelfth hereof. The Managers and the Committees, with the approval of the Board of Directors of the Present Company, shall also have full power and authority, whenever they shall deem proper, to abandon or from time to time to alter, modify or depart from the Plan or any part thereof. In the event of any change, modification or amendment of the Plan, a statement thereof shall be filed with the Depositary and with the Chairman of each of the Committees. If, in the judgment of the Managers or of either Committee, such change, modification, or amendment adversely affects the stock

- of either class, notice of such filing, containing a brief statement of such change, modification or amendment, shall be given by the Managers as provided in Article Twelfth hereof. Holders of certificates of deposit for stock of the class or classes so affected may at any time within thirty days after
- 10 the first publication of such notice, upon surrender to the Depositary or Sub-Depositary of their respective certificates of deposit in negotiable form, withdraw from this Plan and Agreement, upon payment of such taxes as may be imposed on the transfer and delivery of the stock withdrawn. Upon such withdrawal holders of certificates of deposit so withdrawing upon compliance with the terms and conditions herein set forth shall be entitled to
- 20 receive stock of the character and to the amount represented by the certificates of deposit so surrendered or the securities received in respect thereof or substitutes therefor then under the control of the Managers in proportion to their respective interests. Every holder of a certificate of deposit not so surrendering and withdrawing within such thirty days after the first publication of such notice, and whether or not having actual knowledge thereof, shall be deemed to have assented to the changes, modifications and amendments, and shall be bound
- 30 thereby as fully and effectively as if he had actually assented thereto.

Any changes, modifications and amendments made by the Managers and approved by the Committees and the Board of Directors of the Present Company shall be part of the Plan and of this Agreement, and all provisions and references herein concerning the Plan shall apply to the Plan as so changed, modified or amended.

- 40 In case the entire Plan shall be abandoned, the Managers shall thereupon give notice to that effect in the manner provided in Article Twelfth hereof.

In case of such abandonment of the entire Plan, holders of certificates of deposit shall, upon the surrender of their respective certificates of deposit in negotiable form and upon payment of such taxes as may be imposed upon the transfer and delivery of the stock withdrawn, be entitled to withdraw from this Plan and Agreement and to receive stock of the character and to the amount represented by the certificates of deposit so surrendered, or the securities received in respect thereof or substitutes therefor, then under the control of the Managers. The abandonment of the entire Plan shall not affect any previous acts done or obligations undertaken by the Managers or the Committees. 10

Every Depositor who shall exercise any right of withdrawal conferred by any provision of this Agreement shall, by the surrender of his certificate of deposit, and such withdrawal, thereupon, without further act, cease to have any rights under this Plan and Agreement and the exercise of such right of withdrawal shall release and discharge the Managers and the Committees, and each member thereof, the Depositary and all other parties from all liability and accountability under this Plan and Agreement. Deposited stock may not without the consent of the Managers be withdrawn from this Plan and Agreement except as and when in this Agreement provided; provided, however, that if the Plan shall not have been declared operative on or before October 1, 1927, then from and after said date, and until the Plan shall be declared operative, any Depositor may withdraw in the same manner and on the same terms as if the Plan had been abandoned; and further provided, that if voting trust certificates for new stocks issuable hereunder are not ready for delivery on or before October 1, 1930, then from and after that date, and until such voting trust certificates shall be ready for delivery, 20 30 40

any Depositor may withdraw in the same manner and on the same terms as if the Plan had been abandoned.

- TENTH: Kuhn, Loeb & Co. and Bankers Trust Company shall be the Managers under this Plan and Agreement to endeavor to consummate the re-
10 adjustment of share capital in the Plan provided for, with the powers and duties, entitled to the rights and immunities and subject to the conditions and limitations in this Plan and Agreement provided. Both said firm and said corporation as such Managers shall act and concur in all steps and proceedings hereunder, and no action shall be taken except with the assent of both. Said firm of Kuhn, Loeb & Co. shall act as a copartnership, and in case
20 of any change in said firm, the firm of Kuhn, Loeb & Co. or its successor firms, as from time to time constituted, shall continue, with said Bankers Trust Company, or any successor corporation, as Managers, with all the powers, rights and title vested in the Managers hereunder. In the event of the consolidation of Bankers Trust Company with, or its merger into, any other corporation, the corporation formed by such consolidation, or into which such merger shall be made, shall, for all
30 purposes of the Plan and this Agreement, be deemed Bankers Trust Company.

- The Managers, or either of them, may at any time resign, by giving notice of such resignation to the President or Secretary of the Present Company and to the Chairmen of the Committees. In the event of any such resignation, a successor or successors shall be appointed by the Board of Directors of the Present Company, with the approval of the Committees, and the name of such successor or
40 successors shall be filed with the Depositary. The term, Managers, wherever used herein or in the

Plan, shall be deemed to include any such successor or successors. The Manager or Managers so resigning, upon delivering or assigning to such successor or successors all property and rights at the time held by it or them hereunder, shall be relieved from any further liability or accountability hereunder. Any Manager so resigning shall, however, 10
be entitled to compensation for all services rendered prior to such resignation, in such amount as the Board of Directors of the Present Company may determine.

Whenever in this Plan and Agreement it is provided that any matter or thing shall be done or determined by the Committees the same shall be done or determined by the vote or consent of a majority of the members of each of the Committees then serving. Either of the Committees may act 20
at a meeting or in writing or by cable or telegram without a meeting. Any member of either Committee may vote or act by a general proxy or power of attorney subject to change or revocation, or by a proxy or power of attorney for any particular meeting or meetings or for any specific purpose or purposes, and the holder of any such proxy or power of attorney, may, but need not, be another member of such Committee. Any such proxy or power of at- 30
torney may be in writing or by cable or telegram or in any other form satisfactory to such Committee.

The Managers and the Committees shall have the authority and powers expressly conferred upon them, respectively, under the provisions of this Plan and Agreement and also all such incidental powers as they may respectively deem necessary or convenient to enable the Plan to be carried out. In case any member of either Committee shall die, resign or become unable to act as a member of said 40
Committee, his successor may be designated by a

- majority of the remaining members of such Committee and either Committee may at any time or from time to time add to its members. Neither Kuhn, Loeb & Co. nor Bankers Trust Company nor either Committee nor any members thereof nor any member of the firm of Kuhn, Loeb & Co., nor any
- 10 director of the Present Company nor the Depositary or Sub-Depositary assumes any personal responsibility for the execution of the Plan or of this Agreement, or any part of either, or for the result of any steps taken or acts done to accomplish the purposes thereof, or shall be personally liable for any act or omission, or for any act or omission of any agent or employee selected in good faith, or for any error of judgment or mistake of law, or in any
- 20 case except for his, its or their own individual wilful malfeasance. The firm of Kuhn, Loeb & Co. or any member thereof or of either Committee, or any director of the Present Company or Bankers Trust Company or Vermeer & Co., or any officer, director or stockholder of Bankers Trust Company or Vermeer & Co., or any corporation of which any member of the firm of Kuhn, Loeb & Co. or of either Committee may be an officer, director or stockholder, or any firm in which any member of either Committee may be a partner, may be or become
- 30 pecuniarily interested in any contracts, property or matters which this Plan and Agreement concerns, or may be an incorporator, officer or director of, or otherwise interested in, the New Company or any other corporation which may be dealt with under or otherwise affected by this Plan and Agreement. The deposited stock shall be held by the Depositary and Sub-Depositary subject in all respects to the control of the Managers, and any direction given by the Managers shall be full and sufficient authority for
- 40 any action of the Depositary or Sub-Depositary.

The Managers may employ counsel, agents and all necessary assistants; and they may incur and/or discharge any and all expenses which they deem reasonable for the purposes of the Plan or for carrying out or attempting to carry out the same, and any and all expenses in connection with the preparation of this Plan and Agreement, the issue of certificates of deposit and the issue or transfer of stock, the listing on any exchange of certificates of deposit or securities, legal expenses, expenses for advertising and printing, and all taxes, all expenses and compensation of the Depositary or Sub-Depositary, all organization and other expenses of the New Company and of any other company or companies utilized in connection with the reorganization, and all other expenses in any manner connected with this Plan and Agreement or which in their discretion they may deem expedient to incur in undertaking to promote any of the purposes hereof. Subject to the extent provided in the Plan, to the approval of the Committees and of the Board of Directors of the Present Company, the Managers shall be the judges of the propriety or expediency of any and all expenses incurred for the purpose of carrying out the Plan, and the amounts thereof. The Present Company having agreed to pay the expenses of the readjustment, no part of such expenses will be charged against any Depositor.

ELEVENTH: The enumeration of specific powers hereby conferred shall not be construed to limit or to restrict general powers herein conferred or intended so to be; it being intended to confer on the Managers, in respect of all deposited stock, and in all other respects, any and all powers which the Managers may deem expedient in or towards carrying out or promoting the purposes of this Plan and Agreement in any respect, even though any such

power be apparently of a character not now contemplated; and the Managers may exercise any and every such power as fully and effectively as if the same were herein distinctly specified, and as often as for any reason they may deem expedient. The Managers may, at any time or from time to time, and whether or not the Plan shall have been declared operative in whole or in part, exercise in whole or in part any or all the powers conferred upon them by this Plan and Agreement. The methods to be adopted towards carrying out this Plan and Agreement shall be entirely discretionary with the Managers, subject to the approval of the Committees, and this Plan and Agreement shall in all respects be liberally construed so as to enable the Managers to carry into effect the purposes of the Plan, whether in the form hereto annexed or with such changes, modifications and amendments as may be made pursuant to any of the provisions of this Plan and Agreement. Anything which in this Plan and Agreement the Managers are authorized to do or allow to be done, they may do or allow to be done by or through such agents or agencies as in their discretion they may determine, or by or through others, with their approval, consent or acquiescence, or by contracting therefor with any person, firm or corporation. The Managers and the Committees may construe this Plan and Agreement, and their construction thereof or action thereunder shall be final and conclusive, and they may supply any defect or omission or reconcile any inconsistency, in such manner and to such extent as they shall deem expedient to carry out the same and they shall be the sole and final judges of such expediency.

40 TWELFTH: All calls or notices hereunder, except when herein otherwise expressly provided, shall be

published in a daily newspaper of general circulation in the Borough of Manhattan, City of New York, twice in ten days, on any day of the week. Any call or notice whatsoever when so published by the Managers shall be taken and considered as though personally served on all parties hereto and upon all Depositors and others entitled to notice under this Plan and Agreement as of the date of the first publication thereof, and such publication shall be the only notice required to be given under this Plan and Agreement, and shall be conclusive upon anyone entitled to such notice, whether or not he shall have had actual notice or knowledge of such publication or of the subject matter thereof. The Managers will cause to be mailed to each record holder of a certificate of deposit, at his address as shown by the records of the Depositary, a copy of any notice to be given pursuant to Article Ninth hereof, within five days after the first publication thereof, but failure to mail a copy of any such notice shall not invalidate such notice, or entitle any Depositor to any relief hereunder by reason of such failure. 10 20

THIRTEENTH: The acceptance of new stock by any Depositor shall bar such Depositor from questioning the conformity of such stock in any particular to any provisions of the Plan; and the acceptance of new stock by a majority in amount of the Depositors of any class shall in each case respectively bar all Depositors of that class, and shall constitute a release and discharge of the Managers and the Committees, on the part of all the holders of outstanding certificates of deposit of such class from all liability and accountability of any kind, character and description whatsoever, save the obligation to make delivery of a like *pro rata* amount of cash and/or stock upon the surrender of outstanding certificates of deposit. 30 40

10 FOURTEENTH: This Plan and Agreement shall bind and benefit the several parties, including the Depositors hereunder, and their respective heirs, executors, administrators, successors and assigns. This Agreement may be executed in any number of counterparts, all of which shall constitute one and the same instrument. The Managers and each Committee may, if convenient, sign different counterparts hereof.

20 IN WITNESS WHEREOF the Managers have subscribed this Agreement, or a counterpart hereof, and each of the Committees has caused this Agreement, or a counterpart hereof, to be executed on its behalf by a majority of its members, thereunto duly authorized, all as of the date hereof, and the Depositors have become parties hereto in the manner hereinbefore provided.

KUHN, LOEB & CO.,
Managers.

BANKERS TRUST COMPANY,
By B. A. THOMPkins,
Vice-President.

30 ANDREW J. MILLER,
SAMUEL L. FULLER,
HENRY ROGERS WINTHROP,
Committee for Holders of Common Stock.

GAYER G. DOMINICK,
FRANK ALTSCHUL,
DEWEES W. DILWORTH,
CHARLES S. HAIGHT,
HAROLD M. LEHMAN,
MAX J. H. ROSSBACH,
40 *Committee for Holders of Preferred Stock.*

Exhibit A-10.

AGREEMENT OF MERGER AND CONSOLIDATION, made and entered into this 19th day of May, 1927, by and between CENTRAL LEATHER COMPANY, a corporation of the State of New Jersey and the Directors thereof, parties of the first part, and THE UNITED STATES LEATHER COMPANY, a corporation of the State of New Jersey and the Directors thereof, parties of the second part.

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WHEREAS, the principal and registered office of each of said corporations in the State of New Jersey is at No. 15 Exchange Place, in the City of Jersey City, County of Hudson, and The Corporation Trust Company is the agent therein in charge thereof upon which process against each of said corporations may be served within said State; and

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WHEREAS, said Central Leather Company was heretofore incorporated under the laws of the State of New Jersey, and whereas, under the certificate of incorporation of said corporation, filed in the office of the Secretary of State of the State of New Jersey on April 12, 1905, said corporation has an authorized capital stock of eighty million dollars (\$80,000,000), divided into eight hundred thousand (800,000) shares of the par value of one hundred dollars (\$100) each, of which four hundred thousand (400,000) shares are seven per cent. (7%) cumulative preferred stock and four hundred thousand (400,000) shares are common stock, and there have been duly issued and are now outstanding certificates for three hundred thirty-two thousand, nine hundred ninety and one-half (332,990.5) shares of said preferred stock and for three hundred ninety-seven thousand, ten and three hundred five thousandths (397,010.305) shares of said common stock; and

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10 WHEREAS, said Central Leather Company has executed its indenture, dated January 1, 1925, to Bankers Trust Company, as Trustee, providing for an issue of its Twenty Year 6% First Lien Sinking Fund Gold Bonds for an aggregate principal amount of not exceeding fifteen million dollars (\$15,000,000) at any one time outstanding, of which bonds on April 30, 1927, nine million, three hundred eighty-seven thousand dollars (\$9,387,000), principal amount, were outstanding in the hands of the public, three million, thirty-seven thousand dollars (\$3,037,000), principal amount, were held in the treasury of said Central Leather Company and two million, five hundred seventy-six thousand dollars (\$2,576,000), principal amount, had been retired and cancelled; and

20 WHEREAS, the certificate of incorporation of said Central Leather Company was amended by certificate filed in the office of the Secretary of State of the State of New Jersey on August 19, 1909; and

30 WHEREAS, said The United States Leather Company was heretofore incorporated under the laws of the State of New Jersey, and whereas, under the certificate of incorporation of said corporation, filed in the office of the Secretary of State of the State of New Jersey on September 27, 1909, said corporation has an authorized capital stock of one hundred thousand dollars (\$100,000), divided into one thousand (\$1,000) shares of the par value of one hundred dollars (\$100) each, all of one class, and there have been duly issued and are now outstanding certificates for all of said shares; and

40 WHEREAS, said Central Leather Company and said The United States Leather Company were

organized for the purpose of carrying on business of the same or a similar nature; and

WHEREAS, the respective boards of directors of said corporations deem it advisable, to the end that greater efficiency and economy of management may be accomplished, and otherwise and generally to the advantage and welfare of said corporations and their several and respective stockholders that said corporations merge and consolidate under and pursuant to 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 acts supplemental thereto and amendatory thereof;

NOW, THEREFORE, in consideration of the premises and of the mutual agreements, covenants, provisions and grants herein contained, it is hereby agreed by and between said parties hereto, and in accordance with said Act of the Legislature of the State of New Jersey and the several acts supplemental thereto and amendatory thereof, that said Central Leather Company and said The United States Leather Company shall be and the same hereby are merged and consolidated into a single corporation which shall be a new corporation under the laws of the State of New Jersey to be formed by means of such merger and consolidation;

AND the parties hereto do by these presents agree to and prescribe the terms and conditions of said merger and consolidation, and the mode of carrying the same into effect, which terms and conditions and mode of carrying the same into effect the parties hereto do mutually and severally agree and covenant to observe, keep and perform, that is to say:

ARTICLE I.

The name of said new corporation, which is hereinafter referred to as the Company, shall be THE UNITED STATES LEATHER COMPANY.

10 ARTICLE II.

20 The objects for which the Company is formed or created shall be the manufacture and sale of leather, lumber and belting, including the acquisition, disposition and use in the manner and to the extent permitted by law, of all necessary and convenient lands, timber, bark, tanneries, mills, plants, machinery, supplies and other articles and property necessary to or convenient in connection with the manufacture and sale of leather, lumber and belting, as aforesaid; and in general, the engagement in any and all lawful business whatever, which may be deemed necessary or convenient in connection with the business of manufacturing and selling leather, lumber and belting as aforesaid, in the State of New Jersey and in the States of New York, Massachusetts, Maryland, Virginia, West Virginia, Pennsylvania, Tennessee, Georgia, Kentucky, Wisconsin, Maine, Michigan, Washington, California, Oregon, North Carolina, Alabama, Illinois, Indiana and elsewhere within the limits of the United States and Canada and in foreign countries.

30 And also, to the extent deemed necessary to or convenient in connection with the business of the Company hereinabove mentioned, to purchase, acquire, hold, sell, assign, transfer, mortgage, pledge, exchange, or otherwise dispose of shares of the capital stock of any other corporation or corporations created under the laws of this or any other state or country, and to exercise while owner of said
40 stocks, all the rights, powers and privileges includ-

ing the right to vote thereon, which natural persons being the owners of said stock might, could or would exercise.

And also, to the extent deemed necessary to or convenient in connection with the business of the Company hereinabove mentioned, to purchase, acquire, hold, sell, assign, transfer, mortgage, pledge, exchange, or otherwise dispose of any securities or evidences of debt created by any other corporation or corporations of this or any other state or country, in the same manner and to the same extent as natural persons being the owners thereof might, could or would do. 10

The Company may from time to time conduct its business in other states, and in the territories and dependencies of the United States, in the District of Columbia and in foreign countries; it may have an office or offices and, except as otherwise required by law, keep its books in whole or in part, at a point or points outside of the State of New Jersey, and it may hold, purchase, mortgage and convey real and personal property in any state, territory, dependency, District of Columbia, or foreign country. 20

Without in any particular limiting or restricting any of the other objects and powers of the Company, it is hereby expressly declared and provided that the Company shall also have power to issue bonds and other obligations in payment for property, including shares of stock and other securities, which may be purchased or acquired by it, or for money borrowed, or for any other lawful object in and about its said business; to mortgage or pledge any property which may be owned or acquired by it, or in which it may be interested, to secure any bonds, or other obligations by it issued or incurred; to make and perform contracts of every kind and 30 40

description; to declare dividends payable in cash or otherwise as may be permitted by law; and in carrying on its said business, or so far as may be necessary or proper for the purpose of attaining or furthering any of its said objects or purposes, to do any and all other things and exercise any and all other powers which now or hereafter may be permitted by law.

ARTICLE III.

The number of the first directors and officers of the Company shall, respectively, be fifteen and seven; and the names and places of residence of such directors and officers, who shall hold their offices until their successors be chosen or appointed, as provided in Article VII hereof, are as follows:

	<i>Names of Directors</i>	<i>Places of Residence</i>
	Hiram S. Brown	Rye, N. Y.
	Madison J. Beach	Ridgway, Pa.
	Charles Einsiedler	Sterling, N. J.
	Ernest Griess	Cincinnati, Ohio
	Charles S. Haight	New York, N. Y.
	W. H. Harkness	New York, N. Y.
30	O. C. Hoyt	Stamford, Conn.
	H. M. Lehman	New York, N. Y.
	William McAdoo, Jr.	Fort Washington, Pa.
	A. J. Miller	New York, N. Y.
	L. W. Perrin	New York, N. Y.
	Max J. H. Rossbach	New York, N. Y.
	C. S. Sargent, Jr.	New York, N. Y.
	Lewis L. Strauss, Jr.	New York, N. Y.
	Boylston A. Tompkins	New York, N. Y.

<i>Office</i>	<i>Names of Officers</i>	<i>Places of Residence</i>
President	Hiram S. Brown	Rye, N. Y.
First Vice-Pres't	W. H. Harkness	New York, N. Y.
Second Vice-Pres't	William McAdoo, Jr.	Fort Washington, Pa.
Third Vice-Pres't	Madison J. Beach	Ridgway, Pa.
Fourth Vice-Pres't	Arthur T. Lynch	New York, N. Y.
Secretary	Harry W. Hill	New York, N. Y.
Treasurer	Harry W. Hill	New York, N. Y.

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ARTICLE IV.

The authorized capital stock of the Company shall be one million, sixty-three thousand, nine hundred ninety-two (1,063,992) shares, divided into one hundred sixty-six thousand, four hundred ninety-six (166,496) shares of 7% Cumulative Prior Preference Stock of the par value of one hundred dollars (\$100) each (hereinafter referred to as the prior preference stock), two hundred forty-nine thousand, seven hundred forty-three (249,743) shares of Class A Participating and Convertible Stock without par value (hereinafter referred to as the class A stock) and six hundred forty-seven thousand, seven hundred fifty-three (647,753) shares of Common Stock without par value (hereinafter referred to as the common stock).

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The rights of the holders of the prior preference stock, the class A stock and the common stock, respectively, and a description of said classes of stock, with the terms on which the same are created, shall be as follows:

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(a) The holders of the prior preference stock shall be entitled to receive, if and as declared by the board of directors, dividends from the surplus of the Company or from its net profits at the rate

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of seven per cent. (7%) per annum, and no more, from July 1, 1926, payable quarterly on dates to be fixed by the by-laws of the Company or by resolution of its board of directors. Such dividends shall be paid or declared and set apart for payment before any dividends shall be paid upon, or declared and set apart for, the class A stock or the common stock of the Company, and shall be cumulative, so that if in any quarterly dividend period dividends at the rate of seven per cent. (7%) per annum shall not have been paid upon, or declared and set apart for, the prior preference stock, the deficiency shall be fully paid or set apart for payment before any dividends shall be paid upon, or declared and set apart for, the class A stock or the common stock of the Company.

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(b) The outstanding shares of prior preference stock may be redeemed at any time, in whole or in part, at the option of the board of directors, on not less than thirty (30) days' notice to the holders of record of stock to be redeemed, given by mail and by publication in such manner as may be prescribed by the by-laws of the Company or by resolution of its board of directors, by the payment in cash for each share of stock so to be redeemed of an aggregate amount consisting of one hundred ten per cent. (110%) of the par amount thereof and in addition thereto a sum equal to all dividends accrued and unpaid thereon to the date of redemption, whether or not earned or declared, which aggregate amount is hereinafter called the redemption price. If less than all of the outstanding shares of prior preference stock are to be redeemed, the shares to be redeemed shall be selected by lot, in such manner as the board of directors shall determine. From and after the date fixed in any

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such notice as the date of redemption (unless default shall be made by the Company in providing moneys for the payment of the redemption price) all dividends on the shares of prior preference stock so called for redemption shall cease to accrue, and all rights of the holders thereof as stockholders of the Company, except the right to receive the redemption price upon surrender of the certificates for the stock so redeemed, shall cease and determine. At any time after notice of redemption has been mailed to the holders of prior preference stock called for redemption, the Company may deposit the redemption price of all outstanding prior preference stock to be redeemed with any bank or trust company in the City of New York, named in such notice, for the *pro rata* benefit of the holders of said stock, and upon such deposit the holders of said stock shall cease to be stockholders with respect to said stock and shall have no interest in or claim against the Company with respect to said stock, but shall be entitled only to receive their *pro rata* share of the moneys so deposited, without interest, upon surrender of the certificates for the stock so redeemed. Any moneys unclaimed at the end of six years from the date of any such deposit shall be repaid to the Company.

(c) In the event of liquidation or dissolution of the Company, whether voluntary or involuntary, the holders of the prior preference stock then outstanding shall be entitled to receive out of the assets of the Company the par value of their respective shares and an amount equal to the dividends accrued and unpaid thereon to the date of distribution, whether or not earned or declared, before any distribution shall be made to the holders of the class A stock or of the common stock of the Com-

pany. After such distribution to the holders of the prior preference stock, all further amounts distributable to the stockholders of the Company shall be divided among the holders of the class A stock and the common stock in the manner hereinafter provided. If the assets of the Company available for distribution to its stockholders shall not be sufficient to permit the payment in full of the sums payable as aforesaid to the holders of the prior preference stock upon any such liquidation or dissolution, then all such assets of the Company shall be distributed ratably among the holders of prior preference stock according to the amounts which they respectively would be entitled to receive, if such assets available for distribution as aforesaid were sufficient to permit the payment in full of said sums.

(d) Within three months after the end of each fiscal year the Company shall, subject to the provisions of this subdivision (d), out of the net profits of the Company for such fiscal year remaining after deducting therefrom the amount required to pay full cumulative dividends upon the prior preference stock for such fiscal year, set aside as a sinking fund for the purchase or redemption of the prior preference stock a sum which shall be sufficient to retire at the redemption price thereof, five per cent. (5%) of the maximum par value of said stock at any time outstanding. In the event that the net profits for such fiscal year, after deduction as above provided, do not equal such sum, then the Company shall set aside as such sinking fund the total net profits for such fiscal year remaining after such deduction and, in addition, the board of directors, in its uncontrolled discretion, may set aside, as a part of such sinking fund, out of the earned surplus of the Company at the end of such fiscal year such

further sum, if any, up to the maximum amount hereinabove specified, as it may deem advisable. No dividends shall be paid or declared on the class A stock or on the common stock in any fiscal year, unless there shall have been set aside for such sinking fund such part of the maximum sinking fund payment to be made hereunder out of the net profits of such fiscal year as is proportionate to the portion of such fiscal year elapsed prior to the date fixed for the payment of such dividend. The obligation of the Company to make payments to said sinking fund shall not be cumulative, so that if the profits for any fiscal year shall not be sufficient to permit the setting aside for such fund of a sum sufficient to retire said percentage of prior preference stock, the Company shall not be required to make up the deficiency from the profits of the succeeding year or years or otherwise. The sum or sums set aside for the sinking fund in each year shall be applied, as promptly as in the judgment of the board of directors may be practicable, to the purchase of prior preference stock at public or private sale (or, if any of the prior preference stock shall be deposited under a voting trust agreement, under which voting trust certificates may be surrendered by the Company in exchange for prior preference stock, to the purchase of voting trust certificates issued under such voting trust agreement) at not exceeding the redemption price of the prior preference stock; and if and to the extent that the same can not be so applied within four months from the date when the same shall have been so set aside, it shall thereafter be applied to the redemption of said stock by lot at the earliest date permitted by this Agreement and not inconsistent with any regulations of the New York Stock Exchange. Shares of prior preference stock purchased by the Company otherwise than by the

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operation of the sinking fund and cancelled shall be credited, at one hundred ten dollars (\$110) per share, against the earliest sinking fund payment or payments due thereafter.

- 10 In case the Company shall begin business on any day other than the first day of its fiscal year, the provisions of this subdivision (d) shall apply to the net profits of the remainder of the fiscal year in which the Company begins business, but the maximum sinking fund requirement for such fiscal year shall be the same proportion of the maximum annual sinking fund requirement that the number of days between the date when the Company begins business and the end of such fiscal year is of 365.

- 20 Shares of the prior preference stock redeemed or purchased under any provisions of this Agreement shall be retired by resolution of the board of directors of the Company and shall not be reissued and no stock shall be issued in lieu thereof or in exchange therefor, and the authorized amount of prior preference stock shall be deemed to be reduced to the extent of the shares so retired. In every case of redemption the Company shall make compliance with the requirements of the laws of the State of New Jersey in such case provided. Any
- 30 voting trust certificates in respect of prior preference stock purchased under any provisions of this Agreement shall forthwith be surrendered to the voting trustees who issued the same, in exchange for prior preference stock, and such prior preference stock shall be deemed to have been purchased hereunder.

- 40 (e) So long as any shares of the prior preference stock shall be outstanding, no funded debt and no stock ranking ahead of or on a parity with

said stock shall be authorized or issued, nor shall the Company be a party to any merger or consolidation with any other corporation, except in each case upon the affirmative vote, assent or consent of the holders of record of not less than two-thirds of the then outstanding shares of prior preference stock.

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(f) After full cumulative dividends as aforesaid upon the prior preference stock for all past dividend periods shall have been paid or declared and set apart for payment, and after making payment of or provision for full dividends on such stock for the then current fiscal year, and after the Company shall have complied with the foregoing requirements in respect of any and all amounts then required to be set aside in respect of the prior preference stock sinking fund for such year, the holders of the class A stock shall, subject to the provisions of Article VI hereof, be entitled to receive or to have set apart for payment, from the remaining surplus or from the remaining net profits of the Company, if and as declared by the board of directors, preferential dividends up to but not exceeding four dollars (\$4) per share per annum (or at that annual rate for any fiscal period of less than twelve months), payable annually, semi-annually or quarterly as may be determined by said board, before any dividends shall be paid upon or declared and set apart for the common stock in such fiscal year. Such preferential dividends on the class A stock (hereinafter called class A preferential dividends) shall be non-cumulative, whether earned or not earned; that is to say, the holders of said stock shall be entitled to receive such dividends thereon in any fiscal year only to the extent declared by the board of directors, and

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if in any fiscal year dividends aggregating four dollars (\$4) per share shall not be paid upon or declared and set apart for the class A stock, the deficiency shall not be made up in the succeeding year or years whether or not such dividends shall have been earned in such fiscal year, and whether or not
10 the Company shall have any remaining surplus or net profits in such year.

(g) Subject to the provisions of the foregoing subdivisions (a) and (d), after class A preferential dividends up to four dollars (\$4) per share per annum shall have been paid on the class A stock in any fiscal year, or declared and set apart for payment in such fiscal year, the holders of the class A stock shall be entitled to participate equally with
20 the holders of the common stock in all further dividends paid in such year (so that each share of class A stock shall receive, in addition to the class A preferential dividend, the same amount as shall be paid in dividends on each share of common stock) until the total dividends paid in any fiscal year on the class A stock, or declared and set apart for payment in such fiscal year, inclusive of the class A preferential dividend, shall equal six dollars (\$6) per share, and thereafter such stock shall
30 have no right to participate in any further dividends paid in such year. In the event of any issue to the holders of common stock of additional common stock as a stock dividend, or of any subdivision of the outstanding common stock into a greater number of shares, the aggregate amount thereafter payable as dividends on the common stock in any fiscal year shall not, until the class A stock shall have received the additional amount of two dollars (\$2) per share in such fiscal year as provided
40 in this subdivision (g), exceed the amount which

would have been payable on the common stock under the foregoing provisions of this subdivision (g) if such additional stock had not been so issued or the outstanding stock had not been so subdivided. Whenever the dividends on the class A stock paid in any fiscal year, or declared and set apart for payment in such fiscal year, aggregate six dollars (\$6) per share, any additional amounts distributed in dividends in such fiscal year shall be distributed among the holders of the common stock. 10

(h) Any holder of the class A stock, at his option and at any time, may exchange all or any of the shares of said stock held by him for shares of the common stock of the Company, share for share (such shares of common stock to be full-paid and non-assessable), by surrender to the Company of the certificate or certificates representing the class A stock so to be exchanged and upon such surrender shall be entitled to receive in lieu thereof one or more certificates for a like aggregate number of shares of the common stock of the Company; provided, however, that no shares of common stock shall be required to be so issued while the transfer books of the Company are closed for any purpose. In the event of the declaration by the Company of a dividend on its common stock, payable in stock of the Company of any class, or in the event of any subdivision of the outstanding common stock into a greater number of shares, the Company shall give notice of the declaration of such dividend or of such subdivision by publication once a week for two successive calendar weeks (in each instance on any day of the week) in a daily newspaper published and of general circulation in the Borough of Manhattan, City and State of New York, the date of the last publication to be at least fourteen 20 30 40

days prior to the date fixed for closing the transfer books or for taking a record of stockholders for the purpose of such dividend or of such subdivision, and by mailing a copy of such notice, at least fourteen days prior to the closing of the transfer books or such record date, to each holder of record of class A stock at his last address as it appears on the books of the Company. Shares of the class A stock so surrendered shall be retired and shall not be reissued, and (except as aforesaid) no stock shall be issued in lieu thereof or in exchange therefor, and the authorized amount of class A stock shall be deemed to be reduced to the extent of the shares so surrendered. So long as any of the class A stock is outstanding there shall be reserved unissued, out of the number of shares of common stock which the Company is authorized to issue, such number of shares as the holders of the class A stock are entitled to receive under the provisions of this paragraph (h).

(i) In the event of liquidation or dissolution of the Company, whether voluntary or involuntary, after payment of one hundred dollars (\$100) per share together with accrued and unpaid dividends on the prior preference stock, two-thirds of all further amounts distributable shall be distributed *pro rata* among the holders of the class A stock; provided, however, that if at the time of such liquidation or dissolution the number of shares of class A stock outstanding shall be less than two hundred forty-nine thousand, seven hundred forty-three (249,743), each holder of class A stock shall be entitled to receive in respect of each share of said stock then held by him, such portion, and such portion only, of two-thirds of the assets so distributable as shall be obtained by dividing said two-thirds by two hundred forty-nine thousand, seven

hundred forty-three (249,743); and the holders of the common stock shall be entitled to receive, in proportion to the number of shares of common stock held by them respectively, all the remaining assets of the Company available for distribution to its stockholders.

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(j) So long as any shares of the class A stock shall be outstanding, no funded debt and no stock ranking ahead of or on a parity with said stock shall be authorized or issued, nor shall the Company be a party to any merger or consolidation with any other corporation, except in each case upon the affirmative vote, assent or consent of the holders of record of at least two-thirds of the then outstanding shares of class A stock.

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(k) Subject to the requirements of the laws of the State of New Jersey and the provisions of this Agreement, the holders of the prior preference stock, of the class A stock and of the common stock shall have equal voting powers, except as follows:

At each election of directors the holders of the prior preference stock and of the class A stock, voting together share for share, shall have the right to elect two-thirds of the members of the board of directors of the Company; and the holders of the common stock shall have the right to elect the remaining members of the board of directors, provided, however, that at any election of directors occurring after prior preference stock to the amount of ten million dollars (\$10,000,000) par value shall have been retired, if full dividends shall have been paid on the prior preference stock for all quarterly dividend periods ended prior to such election and dividends to the amount of four dollars (\$4) per share shall also have been paid upon the class A

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stock in the fiscal year immediately preceding such election, then the holders of the common stock shall have the right to vote for the election of all directors, share for share with the holders of the prior preference stock and the class A stock; otherwise the directors shall be elected as above provided.

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(l) "Dividends accrued and unpaid" or "accrued and unpaid dividends," whenever used in this Agreement shall be deemed to mean, with respect to any of the prior preference stock, that amount which shall be equal to seven per cent. (7%) per annum upon the par amount of such stock from July 1, 1926, to date, less the aggregate amount of all dividends paid upon such shares.

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(m) For all purposes of this Article IV, the net profits and surplus of the Company shall be determined in accordance with good accounting practice, and, so far as permitted by law, shall be determined on the basis of a consolidated balance sheet and consolidated income account (eliminating inter-company items) of the Company and all corporations, at least ninety per cent. of the capital stock of which, except directors' qualifying shares, is owned by the Company and/or owned by any other corporation, at least ninety per cent. of the capital stock of which, except directors' qualifying shares, is owned by the Company.

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ARTICLE V.

The manner of converting the capital stock of each of the said merging and consolidating corporations into the capital stock of the Company shall be as follows:

40 One thousand (1000) full-paid and non-assessable shares of the common stock of the Company

shall be apportioned among and issued to the stockholders of The United States Leather Company, one of the parties hereto of the second part, as hereinafter provided.

One hundred sixty-six thousand, four hundred ninety-five and a quarter (166,495.25) full-paid and non-assessable shares of the prior preference stock, two hundred forty-nine thousand, seven hundred forty-three (249,743) full-paid and non-assessable shares of the class A stock and three hundred ninety-seven thousand, ten (397,010) full-paid and non-assessable shares of the common stock of the Company and the sum of one million, six hundred sixty-four thousand, nine hundred fifty-two and fifty hundredths dollars (\$1,664,952.50) in cash shall be apportioned among and issued or paid to the stockholders of Central Leather Company, one of the parties hereto of the first part, as hereinafter provided.

Each share of stock of said The United States Leather Company shall forthwith upon the filing of this Agreement as required by law, be converted into one share of common stock of the Company, and stockholders of said The United States Leather Company, upon surrender of certificates for said stock, shall be entitled to receive one or more certificates for a like number of shares of common stock of the Company.

Each share of preferred stock of Central Leather Company shall forthwith upon the filing of this Agreement as required by law, be converted into one-half share of the prior preference stock of the Company and three-fourths of a share of the class A stock of the Company, and each holder of such preferred stock shall be entitled, upon the surrender by such holder of the certificate or certificates representing said stock, to receive for each share of

said stock so held by him "(a) fifty dollars (\$50) par value (one-half share) of the prior preference stock of the Company, (b) three-quarters of a share of the class A stock of the Company, and (c) five dollars (\$5) in cash."

- 10 Each share of common stock of Central Leather Company shall forthwith upon the filing of this Agreement as required by law, be converted into a share of the common stock of the Company and each holder of such common stock shall be entitled, upon the surrender by such holder of the certificate or certificates representing said stock, to receive for each share of said stock so held by him one share of the common stock of the Company.

- 20 Upon the exchange hereinabove provided for certificates for fractional shares shall not be issued, but in lieu thereof there shall be issued to each stockholder a scrip certificate representing the fraction, if any, of a share of prior preference stock over and above the number of whole shares of said stock to which he is entitled and a scrip certificate representing the fraction, if any, of a share of class A stock over and above the number of whole shares of said stock to which he is entitled. Such scrip certificates shall be transferable by delivery and shall not bear dividends, and upon surrender of the
- 30 same, on or before January 1, 1930, with other scrip certificates of like import, together representing one or more full shares of the same class, the holder shall be entitled to receive a certificate or certificates for the number of full shares which such scrip certificates so surrendered shall aggregate. Holders of scrip certificates shall not be entitled to receive any dividends payable prior to the surrender thereof as aforesaid, and any scrip certificates not so surrendered on or before January 1, 1930, shall be
- 40 void.

If the Company shall acquire, by purchase or in any other manner (other than by the surrender thereof as herein provided), any of the stock of Central Leather Company or of The United States Leather Company, such stock shall forthwith be cancelled, and the board of directors of the Company may sell or otherwise dispose of the stock of the Company issuable in exchange therefor hereunder to such person or persons, corporation or corporations, and on such terms, as said board in its uncontrolled discretion may determine. 10

ARTICLE VI.

The capital of the Company at the date of the filing of this Agreement shall be an amount equal to the aggregate of one hundred dollars (\$100) for each share of prior preference stock issuable hereunder, thirty-one and eighty-hundredths dollars (\$31.80) for each share of class A stock issuable hereunder, and ten dollars (\$10) for each share of common stock issuable hereunder (other than common stock issuable in conversion of class A stock). Any amount by which the value of the assets acquired by the Company hereunder, as determined by the board of directors of the Company, after deducting the payments to be made hereunder to holders of preferred stock of Central Leather Company, exceeds the sum of (a) said capital, (b) all liabilities assumed by the Company hereunder and (c) any reserves set up by the board of directors of the Company, shall be surplus of the Company, available for the payment of dividends on the prior preference stock or, subject to the provisions of paragraph (d) of Article VIII hereof, for any corporate purpose other than the payment of dividends on the class A stock or the common stock. 20 30 40

ARTICLE VII.

Subject to the requirements of law and the provisions of Article IV and Article VIII of this Agreement, the directors of the Company and the officers thereof shall be chosen or appointed in the manner and at the time or times prescribed by the by-laws of the Company.

ARTICLE VIII.

(a) The number of directors of the Company shall be fixed by the by-laws thereof and may be increased or decreased by amending the by-laws as therein and as hereinafter in this Article VIII provided; provided, however, that, so long as the holders of the prior preference stock and the class A stock are entitled to elect two-thirds of the number of directors, such number shall at all times be a multiple of three. If a vacancy or vacancies shall be created by any increase in the number of directors of the Company, or otherwise, such vacancy or vacancies may be filled by the affirmative vote of a majority of the directors then in office; provided, however, that so long as the holders of the prior preference stock and the class A stock are entitled to elect two-thirds of the directors (1) the successor to any director elected by the holders of the prior preference stock and the class A stock and two-thirds of the number of additional directors necessary to fill vacancies resulting from any increase in the number of directors shall be elected by the affirmative vote of a majority of the directors so elected then in office, and (2) the successor to any director elected by the holders of the common stock and one-third of the number of directors necessary to fill vacancies resulting from any increase in the number of directors, shall be elected

by the affirmative vote of a majority of the directors so elected then in office. The person or persons elected to fill vacancies as aforesaid shall hold office for the unexpired portion of the term of the other directors then in office and until his successor or their successors shall be elected in accordance with the provisions of Article VII of this Agreement. 10

(b) In the event of any decrease in the number of the directors, the decrease in the number of directors elected by the holders of the prior preference stock and the class A stock, so long as the holders of said stocks shall be entitled to elect two-thirds of the directors, shall be twice the decrease in the number of directors elected by the holders of the common stock. 20

(c) The board of directors shall have power to make by-laws for the Company, not inconsistent with this Agreement, and from time to time to amend, alter or repeal the same, in whole or in part; but any and all by-laws made by the board of directors may be altered or repealed by the stockholders at any annual meeting without previous notice or at any special meeting, provided that notice of the substance of such proposed alteration or repeal be given in the notice of such meeting. Until such time as the board of directors shall make and adopt by-laws for the Company, the by-laws thereof shall be the present by-laws of Central Leather Company, one of the parties hereto of the first part, except so far as such by-laws are inconsistent with the provisions of this Agreement. 30

(d) The board of directors shall have power in its discretion from time to time to fix and to vary the amount of the working capital of the Company; 40

- subject to the provisions of this Agreement to determine what, if any, dividends shall be declared and paid to stockholders out of the surplus of the Company or out of its net profits; except as otherwise expressly provided by this Agreement, to determine the time or times for the declaration and
- 10 payment of dividends; to direct and to determine, subject to the provisions of this Agreement, the use and disposition of any surplus or net profits over and above the capital paid in; and in its uncontrolled discretion to use or apply any surplus funds of the Company to purchase its bonds, stock or other securities, in the market or otherwise, for the purposes of cancellation and retirement; provided, however, that no prior preference stock shall be
- 20 so purchased, except through the sinking fund above provided for, or in anticipation of a sinking fund payment due not more than one year after such purchase, so long as any of the Twenty Year 6% First Lien Sinking Fund Gold Bonds of Central Leather Company, one of the parties hereto of the first part, shall remain outstanding, and no stock of any class shall be so purchased so long as any stock entitled to priority thereover as to dividends or assets shall remain outstanding, except
- 30 that scrip certificates in respect of stock of any class may be purchased at any time in order to eliminate fractional shares.

- (e) Subject to the provisions of this Agreement, the board of directors of the Company may, in its discretion, submit any proposal for the purchase or sale of property, the sale, exchange, encumbrance or other disposition of shares of stocks, bonds, or other obligations belonging to or issued by the Company, or of any other securities in which
- 40 it is interested, or for the borrowing of money for

the Company, for authorization, approval or ratification by the stockholders at any annual meeting or at any special meeting called for the purpose of considering any such proposal; and except as otherwise provided by this Agreement or by law any contract or act in connection therewith which shall be authorized, approved or ratified by the vote of the holders of a majority of the shares of the capital stock of the Company then outstanding which shall be represented in person or by proxy at such meeting (provided that a lawful quorum of stockholders be there represented in person or by proxy) shall be as valid and as binding upon the Company and upon all the stockholders as if the same had been authorized, approved and ratified by each and every stockholder of the Company. 10

(f) The board of directors of the Company shall have power, in its uncontrolled discretion and without any action by stockholders, to sell or otherwise dispose of any of the property of the Company which the board of directors shall deem non-essential for the conduct of the business of the Company. 20

(g) The board of directors of the Company shall have power to sell, convey or otherwise dispose of, or in any manner to liquidate, all, or substantially all, the property, rights and franchises of the Company, as an entirety, upon such terms and conditions and for such considerations, whether in cash, stocks, bonds or other property, as the board of directors may in its discretion determine; provided, however, that no such sale, disposition or liquidation shall be made except with the approval of the holders of not less than two-thirds of the then outstanding shares of prior preference stock and class A stock, taken together, and not less than two- 30 40

thirds of the then outstanding shares of the common stock (such approval to be expressed or given either in writing or by vote at a meeting of the stockholders called for that purpose or in any other manner required or permitted by law as now or hereafter enacted).

10

(h) Any officer elected or appointed by the board of directors of the Company may be removed at any time, with or without cause, by the affirmative vote of the majority of the whole board of directors. Any other officer or employee may be removed at any time, with or without cause, by the vote of the board of directors, or by any committee or superior officer upon whom such power of removal may be conferred by the by-laws or by a vote of the board of directors.

20

The board of directors may by resolution appoint, from time to time, an executive committee from among the members of the board, which committee, subject to the provisions of this Agreement and the by-laws, may exercise the powers of the directors in the management of the business, affairs and property of the Company during the intervals between the meetings of the directors, including the power to cause the seal of the Company to be affixed to documents and papers. A majority of said committee shall constitute a quorum thereof.

30

The board of directors may appoint any other standing committees, and such standing committees shall have and may exercise such powers as may be conferred and authorized by the by-laws or by the board of directors.

40

The board of directors may from time to time appoint, not only other officers of the Company, but also one or more vice-presidents, one or more assistant treasurers and one or more assistant secre-

taries; and to the extent provided by the by-laws or by the board of directors, the persons so appointed, respectively, shall have and may exercise all the powers of the president, of the treasurer and of the secretary, respectively.

The board of directors from time to time shall determine whether, and to what extent, and at what times and places, and under what conditions and regulations, the accounts and books of the Company, or any of them, shall be open to the inspection of the stockholders; and no stockholder shall have any right to inspect any account or book or document of the Company, except as conferred by statute or as authorized by the board of directors. 10

The board of directors may hold its meetings outside the State of New Jersey at such place or places as may from time to time be designated by resolution of the board. 20

Any meeting or meetings of the stockholders of the Company may be held at the office of the Company in the Borough of Manhattan, City and State of New York.

ARTICLE IX.

The Company shall pay all expenses of merger and consolidation. 30

ARTICLE X.

The Company shall have perpetual existence.

ARTICLE XI.

Upon the consummation of the act of merger and consolidation herein agreed upon, all and singular, the rights, privileges, powers and fran- 40

chises of each of said corporations parties hereto, and all property, real, personal and mixed, and all debts due on whatever account, as well for stock subscriptions as all other things in action or belonging to each of said corporations, shall be vested in the Company; and all property, rights, 10 privileges, powers and franchises and all and every other interest shall be thereafter as effectually the property of the Company as they were of the several and respective former corporations, and the title to any real estate, whether by deed or otherwise, under the laws of the State of New Jersey, vested in either of said corporations, shall not revert or be in any way impaired by reason of the said merger and consolidation; and each of the said parties hereto agrees from time to time as and 20 when requested by the Company or its successors or assigns, to execute and deliver or cause to be executed and delivered all such deeds and other instruments, and to take or cause to be taken such further or other action as may be necessary or desirable in order to vest in and confirm to the Company title to and possession of said property, and otherwise to carry out the intent and purpose of this Agreement, provided, that all rights of creditors and all liens upon the property of either of 30 said corporations, parties hereto, shall be preserved unimpaired, and said corporations may be deemed to continue in existence, in order to preserve the same; and all debts, liabilities and duties of either of said corporations shall after such consummation attach to the Company and may be enforced against it to the same extent as if said debts, duties or liabilities had been contracted by it.

The Company expressly assumes the due and punctual payment of the principal of and interest 40 on all of the Twenty Year 6% First Lien Sinking

Fund Gold Bonds of Central Leather Company, and agrees to perform all the covenants and conditions of the Trust Indenture, dated January 1, 1925, between Central Leather Company and Bankers Trust Company, as Trustee, under which such Bonds are issued.

10

ARTICLE XII.

The principal and registered office of the Company in the State of New Jersey, is at No. 15 Exchange Place in the City of Jersey City, County of Hudson, and The Corporation Trust Company is the agent therein in charge thereof, upon which process against the Company in the State of New Jersey may be served.

IN WITNESS WHEREOF said parties to this Agreement have, pursuant to resolutions passed by the respective boards of directors of said corporations at meetings thereof duly and legally held, at which a quorum was present, caused these presents to be signed by the respective Presidents or Vice-Presidents of said corporations and their respective corporate seals to be hereunto affixed attested by their respective Secretaries or Assistant Secretaries, all thereunto duly authorized, and a majority of the directors of each of said corporations have hereunto set their hands and seals, all as of the day and year first above mentioned.

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FOR CENTRAL LEATHER COMPANY
[CORPORATE SEAL] H. S. BROWN
President.

Attest:

H. W. HILL
Secretary.

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Exhibit A-10

H. S. BROWN	[L. S.]	C. S. SARGENT, JR.	[L. S.]
D. G. ONG	[L. S.]	CHAS. EINSIEDLER	[L. S.]
ERNEST GRIESS	[L. S.]	MAX J. H. ROSSBACH	[L. S.]
OLIVER C. HOYT	[L. S.]	E. H. AMORY	[L. S.]
A. T. LYNCH	[L. S.]	WM. MCADOO, JR.	[L. S.]
WM. H. HARKNESS	[L. S.]		

10

Being a majority of the directors of
Central Leather Company.

Signed, sealed and delivered
in the presence of

IRVING S. OLDS

LEONARD D. ADKINS

20

FOR THE UNITED STATES LEATHER COMPANY

[CORPORATE SEAL]

H. S. BROWN
President.

Attest:

H. W. HILL
Secretary.

30

H. S. BROWN	[L. S.]	WM. MCADOO, JR.	[L. S.]
ROLAND H. ZINN	[L. S.]	A. T. LYNCH	[L. S.]
E. H. AMORY	[L. S.]	E. G. G. BROOKER	[L. S.]
WM. H. HARKNESS	[L. S.]	HARRY W. HILL	[L. S.]

Being a majority of the directors of
The United States Leather Company.

Signed, sealed and delivered
in the presence of

H. A. KETCHAM

40

ROBERT W. WESLEY

\$15,000,000

Central Leather Company

Twenty-Year 6% First Lien Sinking Fund Gold Bonds

Due January 1, 1946

Coupon bonds in \$1,000 denomination, convertible as to principal, exchangeable for fully registered bonds, and interchangeable interest payable January 1 and July 1.

Sinking Fund of not less than \$750,000 per annum payable in half yearly installments beginning July 1, 1925, to retire entire issue by maturity. Sinking Fund to operate by purchase of bonds at or below par and accrued interest, or redemption by lot at par and accrued interest. Entire amount of bonds outstanding redeemable as a whole only at 105% and accrued interest upon forty-two days' previous notice.

Hiram S. Pierson, Esq., President of the Central Leather Company, in a letter dated December 12, 1924, copies of which may be obtained from the undersigned, writes in part as follows:

"The purpose of the sale of this issue of bonds is to provide funds, which together with available cash in the Company's treasury, will be used to retire \$18,815,050 First Lien Twenty-Year 5% Gold Bonds of the Company, now outstanding in the hands of the public, which mature on April 1, 1925. The maturing bonds are part of an original issue of \$16,761,150, of which \$17,928,100 of bonds have heretofore been acquired by the Company by the use of funds received partly from the stumpage account of its timber properties and partly from earnings and other sources and no part of which has been provided by new financing. The Company, since its inception in 1903, has never issued any bonds other than this maturing issue.

"Central Leather Company is the largest and leading factor in the heavy leather industry of the United States, owning approximately one third of the tanning capacity and marketing about the same proportion of the total volume of sale of the country. The Company owns and operates extensive and very profitable hemlock and hardwood lumber properties in Pennsylvania and Wisconsin, a glue manufacturing company, and two railroad properties. It owns also a controlling interest in one of the large upper leather manufacturing companies and has other investments.

Messrs. Sanderson & Porter, engineers, who have made an extensive investigation of the business and properties of Central Leather Company and its subsidiary and controlled companies, have reported that, in their opinion, based upon prices and costs prevailing December 31, 1923, the Company should receive from its Pennsylvania and Wisconsin timber properties alone, operated as commercial lumbering and pulpwood properties, more than \$25,000,000 before Federal and State income taxes before their exhaustion and prior to the maturity of the new issue of bonds.

"The Trust Indenture under which the new issue of bonds will be secured will provide that, for the purposes of this sinking fund, there will be paid to the Trustee the entire net receipts (after provision for necessary capital expenditures) of the properties of the timber companies to properly operate the same, all as provided in the Trust Indenture, of the subsidiary companies owning the Pennsylvania and Wisconsin timber lands, including the proceeds from the sale of lands of such companies and an amount for depletion at rates to be stated in the Trust Indenture. If, in any case, the amounts so realized are not sufficient for the interest and minimum sinking fund of \$750,000 per annum on the new issue of bonds, the necessary amounts are to be provided from other Company sources, such payments from other sources to be reimbursed to the Company in later years in case of an excess of payments from the timber properties over the minimum sinking fund obligations in such years. For any surplus paid into the sinking fund in earlier years the Company is to receive a credit in any future year in which there may be a deficiency in the sinking fund. Bonds required for the sinking fund are to be cancelled.

Messrs. Sanderson & Porter have estimated the value of the Company's properties, including its wholly-owned subsidiary companies and its interests in affiliated companies, and net current assets of the Company and its wholly-owned subsidiary companies (after deducting its debts and current liabilities), based upon their study as of December 31, 1923, and the Company's reports for the first six months of 1924 (adjusted to evidence the effect of the present financing), at \$76,036,992, while the Company's only funded debt will be the new issue of \$15,000,000 of bonds. These assets consist of fixed properties of the value of \$19,957,795, investments of the value of \$6,692,066, and net current assets of \$30,407,131.

The new issue of \$15,000,000 of bonds, which will constitute a closed issue, will, therefore, be covered more than five times by the assets of the Company and its subsidiary companies, being covered more than three times by the physical assets and investments of the Company and its subsidiary companies and more than twice by the net current assets of the Company and its subsidiary companies.

The new \$15,000,000 Twenty-Year 6% First Lien Sinking Fund Gold Bonds will be secured, under a Trust Indenture to Bankers Trust Company as Trustee, by the pledge of all of the shares and all of the bonds (in the case where there are bonds), of the wholly-owned subsidiary companies of Central Leather Company which own and operate all the timber properties, the sole, belting and harness leather tanneries, the Susquehanna and New York Railroad and the Tonawanda Valley Railway. The value of the net assets of the companies, the securities of which will be thus pledged, is in excess of \$45,000,000 or more than three times the new issue of bonds, based upon the estimates by Messrs. Sanderson & Porter of the value of fixed assets and investments.

The Company will covenant in the Trust Indenture not to pledge any of its other assets to secure any subsequent loans or permit any of its subsidiary companies to pledge any of their assets, unless, after such pledge, the value of the unpledged net current assets of the Company and its subsidiary companies, all as defined in the Trust Indenture, shall amount to at least one and one-half times the total indebtedness, including this issue of bonds.

"Central Leather Company has earned a large surplus over all charges in almost every year since its organization in 1905, and for the ten years ending December 31, 1923, the average annual net income, applicable to the payment of interest and Federal taxes, amounted to \$5,867,801. These average earnings were made in spite of the fact that, due to the large drop in the value of inventories and the demoralization of the leather industry following the close of the World War, the Company suffered very large losses for the four-year period from 1920 to 1923. Such losses continued on a smaller scale during the first half of the current year, but since then the situation has improved to such an extent that it is now estimated that the earnings available for interest payments for the year 1924 will approximate \$1,350,000, as against \$900,000 per annum required for the interest on the new issue of bonds, which interest will be reduced through the operation of the sinking fund by at least \$45,000 each year. The present management feels confident that this does not reflect the true earning capacity of the Company and that under normal conditions, substantially better earnings can be realized. Notwithstanding the large losses during the above mentioned years, Central Leather Company's timber operations have always, year after year, proven profitable and the Company has been able to retire since the beginning of 1920, from the operation of its timber properties, \$10,142,600 of its First Lien Twenty-Year 5% Gold Bonds maturing on April 1, 1925.

The sale to you of this issue of bonds is subject to the authorization by the stockholders of the Company of the pledge under the new Trust Indenture of the shares of stock and obligations to be subjected thereto, for which purpose a meeting has been called for January 12, 1925, and the form of the bonds and the provisions of the Trust Indenture under which they are to be issued and the proceedings for the creation and issue of the bonds are subject to your approval and that of your counsel.

Application will be made in due course to list this issue of bonds on the New York Stock Exchange.

THE UNDERSIGNED WILL RECEIVE SUBSCRIPTIONS FOR THE ABOVE BONDS, SUBJECT TO ALLOTMENT, AT 95% AND ACCRUED INTEREST, TO YIELD ABOUT 6.45% TO MATURITY.

Central Leather Company First Lien Twenty-Year 6% Gold Bonds, due April 1, 1928, will be accepted on a 2 1/4% interest basis, in payment for bonds allotted, provided that notice of the amount of such bonds to be tendered in payment is given not less than five days prior to the date fixed for delivery of and payment for the new bonds.

Preference in allotment will be given (to the extent determined in each case to be feasible by the undersigned) to subscribers who agree at the time of subscription to make payment in First Lien Twenty-Year 6% Gold Bonds, due April 1, 1928, on the aforementioned basis.

The undersigned reserve the right to close the subscription at any time without notice, to reject any application, to allot a smaller amount than applied for and to make allotments in their uncontrolled discretion.

The above bonds are offered if, when and as issued and received by the undersigned, subject to the authorization by the stockholders of the Company of the pledge under the Trust Indenture of the shares of stock and obligations to be subjected thereto, and subject to the approval of counsel for the undersigned. Temporary bonds or interim receipts will be delivered against payment in New York funds for bonds allotted, which temporary bonds or interim receipts will be exchangeable for engraved bonds when ready for delivery.

Kuhn, Loeb & Co.

Kidder, Peabody & Co.

Bankers Trust Company

Heidelberg, Ickelheimer & Co.

Dominick & Dominick

New York, December 15, 1924.

Subscriptions for the above bonds having been received in excess of the amount offered, the subscription list has been closed and this advertisement appears as a matter of record only.

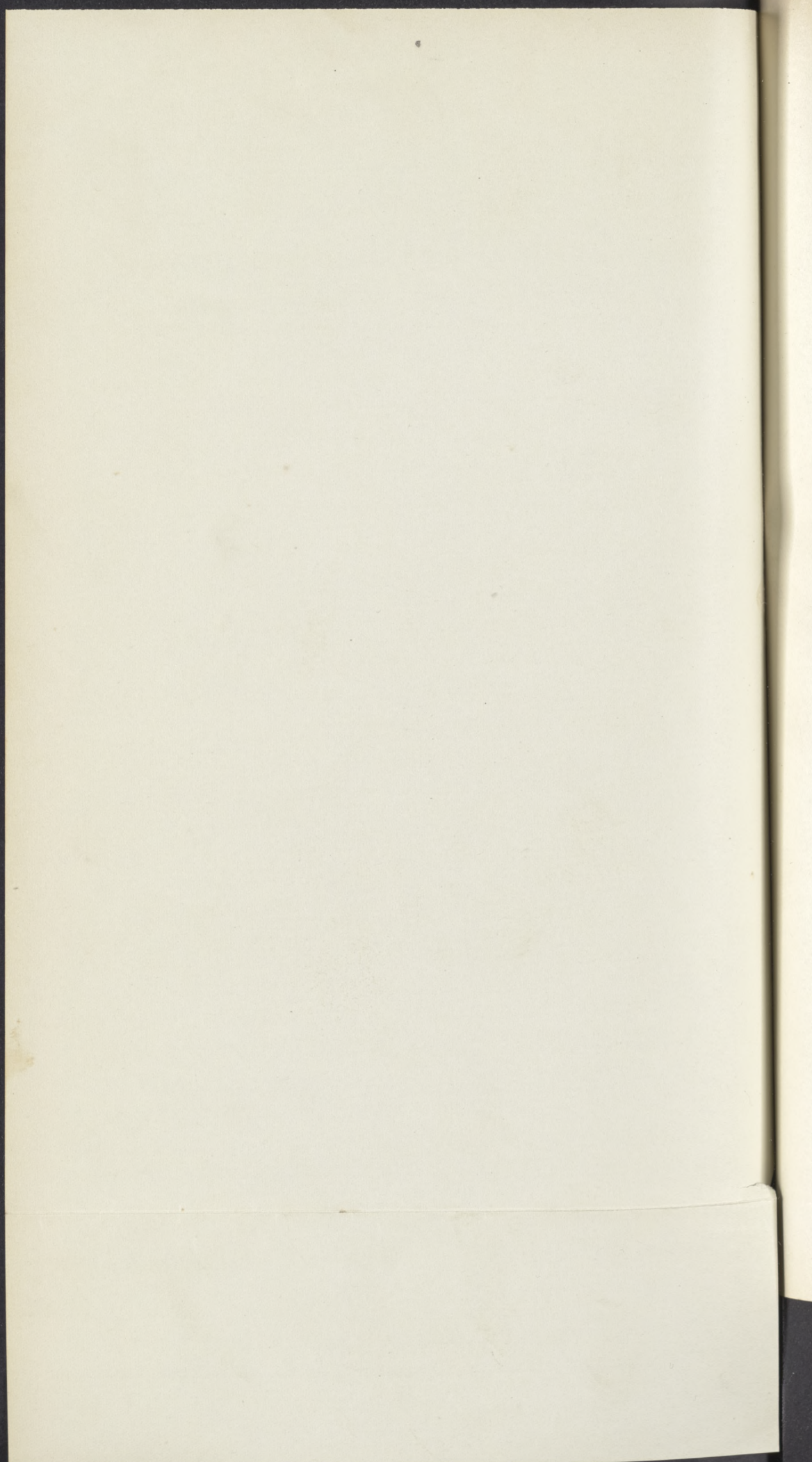


Exhibit A-12.**THE UNITED STATES LEATHER COMPANY**

Statement of Earnings of Central Leather Company
for Period April 1st, 1927 to June 23rd, 1927 (the date
of the Merger of Central Leather Company and The
United States Leather Company) and for the Period
January 1st, 1927 to June 23rd, 1927.

10

Net Profit after all Charges and
Reserves, except Interest and
Discount on funded debt,
April 1st to June 23rd..... \$695,611.18

20

Less: Interest and Discount on
First Lien Sinking Fund, Six
Per Cent. Bonds,

April 1st to June 23rd..... \$199,794.66

Net Profit for Quarter ending June 23rd \$ 495,816.52

Net Profit for Quarter ending March 31st \$ 568,475.27

Total Net Profit for Six Months ending
June 23rd \$1,064,291.79

H. W. HILL, *Secretary.*

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THE HISTORY OF THE UNITED STATES

OF THE UNITED STATES OF AMERICA

10

CHAPTER I

THE UNITED STATES OF AMERICA

11

CHAPTER II

12

13

Exhibit A-13—Compilation made by Mr. Stern of the assets and earning power of Central Leather Company and the value of the shares.

ASSET VALUE

CENTRAL LEATHER COMPANY
PREFERRED STOCK PROVISIONS
(As per Preferred Stock Certificate)

10

AS TO ASSETS

"In case of the liquidation or dissolution or winding up (whether voluntary or involuntary) of the Corporation, the holders of the Preferred Stock shall receive cash to the amount of the par value of such Preferred Stock, together with all accrued and unpaid dividends thereon (but no more) before any payment to the holders of the Common Stock."

20

AS TO DIVIDENDS

The holders of the Preferred Stock are entitled to receive cumulative dividends at the rate of Seven Per Cent (7%) per annum.

Cumulative Dividends on Preferred Stock are in arrears since April 1, 1921.

Priority to which Preferred Stock is entitled at June 22, 1927 is as follows:

30

	Per Share
Par Value	\$100.00
Cumulative Dividends in Arrears at 7% per annum:	
April 1, 1921 to April 1, 1927.....	42.00
April 1, 1927 to June 22, 1927 (2 months, 21 days)	1.57
Total.....	<u>\$143.57</u>

40

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Exhibit A-13

CENTRAL LEATHER COMPANY
Consolidated Balance Sheet—June 22, 1927

ASSETS

CURRENT ASSETS

	Cash, Call Loans and Liberty Bonds:		
10	Cash in Banks and On Hand	\$1,687,322.72	
	Call Loans	7,500,000.00	
	Liberty Bonds	24,123.85	\$ 9,211,446.57
	Other Current Assets:		
	Accounts Receivable	5,244,313.74	
	Bills Receivable	588,962.40	
	Inventories:		
	Leather in Stores, Lumber and Other Finished Products	7,153,545.72	
20	Hides and Leather, Raw and in Process, Bark, Extract and all other Materials	16,390,796.70	29,377,618.56
	Total Current Assets		\$38,589,065.13

SINKING FUND

	Cash with Trustee	709,392.02	
	Accrued	421,432.25	1,130,824.27

INVESTMENTS

30	Central Leather Company First Lien Sinking Fund Bonds—at face value	3,755,000.00	
	Other Investments	6,262,907.53	10,017,907.53

	PROPERTY ACCOUNT, including Timber Lands, Railroads, Tannery Plants and Plants engaged in Lumber, Glue and Other Allied Industrial Operations	20,910,783.77
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	DEFERRED CHARGES TO PROFIT AND LOSS	1,418,044.12
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\$72,066,624.82

Exhibit A-13

LIABILITIES

CURRENT LIABILITIES

Accounts Payable	\$1,556,495.53
Interest Accrued on Bonds	356,154.66
Sinking Fund Accrual	421,432.25

Total Current Liabilities	\$2,334,082.44	10
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FIRST LIEN SINKING FUND SIX PER CENT BONDS

Issued	15,000,000.00	
Less-Retired through Sinking Fund	2,576,000.00	12,424,000.00

Total Liabilities	14,758,082.44	
-------------------------	---------------	--

RESERVES

Fire Insurance	875,000.00	
Marine Insurance	100,000.00	
Liability Insurance	100,000.00	
Miscellaneous	689,234.10	1,764,234.10

20

CAPITAL	55,544,308.28	
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Represented by following book accounts:

Preferred Stock	33,299,050.00
Common Stock	39,701,030.50
Less—Deficit	17,455,772.22

Balance (Excess of Net Assets over Par Value of Preferred Stock)	22,245,258.28
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Total, as above	\$55,544,308.28
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30

\$72,066,624.82

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Exhibit A-13

CENTRAL LEATHER COMPANY
Analysis of Balance Sheet—June 22, 1927

PREFERRED STOCK—332,990½ Shares (par value \$100 each) \$33,299,050.00

CURRENT ASSETS

10	Cash, Call Loans and Liability		
	Bonds	9,211,446.57	
	Other Current Assets (Accounts Receivable, Inventories, etc.) ..	29,377,618.56	
	Total Current Assets	38,589,065.13	
	Less—Current Liabilities	2,334,082.44	
	Net Current Asset	\$36,254,982.69	\$108.87

OTHER ASSETS

20	Investments other than First Lien Sinking Fund Bonds in Treasury	6,262,907.53	
	Property Account	20,910,783.77	
	Total	27,173,691.30	
	Deduct Funded Debt (Net)	7,538,175.73*	
	Equity in Other Assets applicable to Stock	19,635,515.57	58.97
	Total	55,890,498.26	167.84
	DEFERRED CHARGES TO PROFIT AND LOSS	1,418,044.12	4.26
30	Net Assets applicable to Stock before deducting Reserves	57,308,542.38	172.10
	LESS—RESERVES	1,764,234.10	5.30
	Net Assets applicable to Stock after deducting Reserves	\$55,544,308.28	\$166.80
	Preferred Stock—Par Value	\$33,299,050.00	
	Excess of Net Assets over Par Value of Preferred Stock	22,245,258.28	
	Total	\$55,544,308.28	

40 *Funded Debt

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Exhibit A-13

First Lien Sinking Fund Bonds:

Issued	\$15,000,000.00	
Less—Retired through Sinking Fund	2,576,000.00	\$12,424,000.00
Less in Treasury of Company		3,755,000.00
Outstanding in hands of public		8,669,000.00
Less—Sinking Fund (Cash and Accrual)		1,130,824.27
Balance—Funded Debt (Net)		\$ 7,538,175.73

Funded Debt is deducted from Property Account for the reason that as stated in the 1924 Annual Report (page 5) "the timber properties will be so operated that the net receipts therefrom should completely retire the \$15,000,000. Twenty Year 6% First Lien Sinking Fund Bonds well within the date of their maturity", and because the Balance Sheet of June 22, 1927 indicates that in these 2½ years there was accumulated in the Sinking Fund

\$3,706,824.27

20

represented as follows:

Bonds retired through Sinking Fund to June 22, 1927	\$2,576,000.00
Balance in Sinking Fund at June 22, 1927	1,130,824.27
Total	\$3,706,824.27

The Balance Sheet at June 22, 1927 indicates that the net assets of the Company at that date, after deducting reserves, were \$55,544,308.28 which amount is equivalent to \$166.80 per share of Preferred Stock or an amount in excess of the priority to which the Preferred Stock is entitled in liquidation (viz. par value plus accrued and unpaid dividends—being \$143.57 per share at June 22, 1927).

The Assets as stated in the Balance Sheet of June 22, 1927 represent a conservative valuation.

The 1925 Annual Report (pages 4-5) states that "the book value of the Company's Assets as of September 30, 1925 (were) reduced by adjustments aggregating \$7,407,078.44 to cover the

writing off of unnecessary plants and the establishment of sound current values for the remaining plants and other assets of the Company," these adjustments having been made pursuant to examination and report of Messrs. Sanderson & Porter, Engineers.

- 10 The Bond Circular describing the new issue of Central Leather Company 20 Year 6% First Lien Sinking Fund Bonds dated December 15, 1924, states as follows:

20 "Messrs. Sanderson & Porter have estimated the value of the Company's properties, including its wholly owned subsidiary companies and its interest in affiliated companies, and net current assets of the company and its wholly owned subsidiary companies (after deducting reserves and current liabilities) based upon their study as of December 31, 1923 and the Company's reports for the first six months of 1924 (adjusted to evidence the effect of the present financing) at \$76,056,992.00 while the Company's only funded debt will be the new issue of 15,000,000.00 bonds."

- 30 As per the appraisal of Messrs. Sanderson & Porter, the net assets applicable to the Capital Stock of the Company at June 30, 1924, aggregate \$61,056,992.00

The net assets applicable to the Company's Capital Stock at June 22, 1927, as per the Company's balance sheet as at that date, were \$55,544,308.28
Of this amount the surplus net earnings for the period from June 30, 1924 to June 22, 1927 were as follows:

Exhibit A-13

Quarter ended September 30,	
1924 (1924 Report p. 7)	\$272,760.63
Quarter ended December 31,	
1924 (1924 Report p. 7)	357,317.50
Year 1925 (1925 Report)	1,465,075.99
Year 1926 (1926 Report)	534,909.58
Jan. 1, 1927 to June 22, 1927	
(Company's Report)	1,064,291.79

a total of 3,694,355.49

10

so that excluding the surplus net earnings accumulated subsequent to June 30, 1924, the book value of the net assets of the Company, as adjusted at June 30, 1924, were \$51,849,952.79

The book values were, therefore, less than the appraised values by over \$ 9,000,000.00

In the Bond Circular, it is further stated:

"Messrs. Sanderson & Porter, Engineers, who have made an extensive investigation of the business and properties of Central Leather Company, and its subsidiary and controlled companies, have reported that in their opinion, based upon prices and costs prevailing December 31, 1923, the Company should receive from its Pennsylvania and Wisconsin timber properties alone, operated as commercial lumber and pulpwood properties, more than \$25,000,000.00 30

(before Federal and State Income Taxes) before their exhaustion and prior to the maturity of the new issue of bonds."

These timber properties are included in the Company's statement at December 31, 1924 (1924 Report page 11) in the item "Balance of Property Account" \$12,885,214.64

which amount is less than the realizable value placed thereon by Messrs. Sanderson & Porter by over \$12,000,000.00 40

Exhibit A-13

The total amount charged to Surplus for the adjustment of book values of the Company's properties and other assets is as follows:

10	1909 Amount charged to Surplus to cover sundry adjustments (see Exhibit R3) ..	\$22,993,496.02
	1919 Amount charged to Surplus in reduction of Property Account (see Exhibit R3)	8,126,149.12
	1925 Amount charged to Surplus September 30, 1925 in reduction of Fixed and Current Assets (see Exhibit R3)	7,397,891.06
	Total Charges to Surplus (see Exhibit R3)	38,517,536.20
20	in addition to which, money received from interest on treasury bonds and profit on purchase of said bonds to the amount of	2,902,970.90
	was applied to reduction of book value of plants abandoned (see Exhibit R6)	
	making a total of	\$41,420,507.10

30 In view of the above facts, the residual values as now stated upon the books and in the Balance Sheet at June 22, 1927, must be considered as representing a most conservative valuation of the "sound current values of the remaining plants and other assets of the Company."

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CENTRAL LEATHER COMPANY,
EARNING POWER.

The past earnings and future prospects of the Company were sufficiently large to warrant the expectation that dividends of 7% per annum could be paid upon its Preferred Stock.

The Bonds Circular dated December 15, 1924 states as follows:

"Central Leather Company has earned a large surplus over all charges in almost every year since its organization in 1905, and for the ten years ending December 31, 1923 the average annual net income applicable to the payment of interest and Federal taxes, amounted to \$5,867,801.00

These average earnings were made in spite of the fact that due to the large drop in the value of inventories and the demoralization of the leather industry following the close of the World War, the Company suffered very large losses for the four year period from 1920 to 1923."

After deducting:

Interest on Funded Debt \$15,000,000 at 6%	\$900,000.00
and Federal Income Taxes—at present rates	
13½% on \$5,867,801	792,153.00
a total of	1,692,153.00
the average balance available for the preferred stock for the ten year period is	4,175,648.00
as compared with the amount required to pay dividends of 7% per annum thereon (7% of \$33,299,050)	2,330,933.50

The earnings applicable to the preferred stock as evidenced by the more recent reports of the Company is shown in the following tabulation. For the purpose of showing the present normal earning power, the operations for 1925 should be adjusted by excluding as a charge against income certain non-recurring charges, such as the charge off for abandoned plants and the excessive charges for Maintenance, Repairs and Replacements, and for "Expenses and Losses of all Companies," which resulted from the operation of plants which were subsequently abandoned. The operations for 1926 are not shown herein for the reason that, as stated in the Company's annual

Exhibit A-13

report for this year, it experienced certain unforeseen and unusual misfortunes as a result of a forest fire in its timberlands, and a heavy inventory write off which prevent that year from being representative of the earning power of the Company. Interest on funded debt has likewise been excluded for the reason that the Company is in possession of sufficient cash to retire its funded debt and thus eliminate the interest thereon as a charge against income. The details with respect to the respective adjustments are shown below.

For the year 1925:

Total Net Income, before deducting Interest on Bonds (1)	\$2,548,014.59
(1925 Report, Page 16)	
Non-Recurring Charges against Income:	
Abandoned Plants written off	\$2,840,555.30
(N. Y. Stock Exchange Listing Papers of U. S. Leather Co.)	
Maintenance, Repairs and Renewals in excess of normal (2)	500,255.90
"Expenses and Losses of All Companies" in excess of normal (2)	979,109.24
Total Non-Recurring Charges against Income	<u>4,319,920.44</u>
Net Income as adjusted (before deducting Non-Recurring Charges)	<u>\$6,867,935.03</u>
as compared with dividend requirements on the Preferred Stock (7%) of	<u>\$2,330,933.50</u>

(1) Interest on Funded Debt is not to be deducted as a charge against Income in determining the normal earnings applicable to the Preferred Stock for the reason that at June 22, 1927, the cash and cash assets were sufficient to retire the entire outstanding funded debt.

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STATUS AT JUNE 22, 1927

First Lien Sinking Fund Bonds:

Issued	\$15,000,000.00
Less—Retired through Sinking Fund	2,576,000.00
Balance	12,424,000.00
Less—In Treasury	3,755,000.00

10

Balance—Bonds Outstanding in hands of Public \$8,669,000.00

Cash and Cash Assets at June 22, 1927:

Cash in Banks and on Hand	1,687,322.72
Call Loans	7,500,000.00
Liberty Bonds	24,123.85

Total	9,211,446.57
Add—Cash with Trustee (in Sinking Fund)	709,392.02

Total Cash and Cash Assets 9,920,838.59
or an amount in excess of the total outstanding funded debt of the Company.

20

- (2) For the purpose of determining the normal earnings applicable to the Preferred Stock, the income for the year 1925 as reported is to be adjusted by excluding as a charge against income the following non-recurring charges, viz:

Abandoned Plants written off \$2,840,555.30
(see New York Stock Exchange Listing
Papers of U. S. Leather Co.)

Excess of amounts expended in 1925 for

30

- (a) Maintenance, Repairs and Replacements, and
- (b) "Expenses and Losses of all Companies" including expenses for plants abandoned, as compared with normal expenses after such plants had been abandoned, as shown in 1926 report (see Mr. Brown's testimony).

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Exhibit A-13

	"Maintenance Repairs and Replacements"	"Expenses and Losses of All Companies"
1925—Expenditures	\$1,495,070.37	\$3,879,394.77
Normal Expenditures	845,307.44	2,512,346.06
(see 1926 Annual Report)		
10 Excess of 1925 over 1926	649,762.93	1,367,048.71
Deduct—Allowances for decrease in expenses resulting from decreased volume of business (10% of 1925 expenditures)	149,507.03	387,939.47
Excess of 1925 Expenses over Normal Expenses	500,255.90	\$ 979,109.24

The operations for the year 1926 do not furnish a fair basis for determining the normal earnings applicable to the Preferred Stock for the reasons stated in the 1926 Annual Report (page 4) viz:

- 20 (a) "the weakness of hide and leather prices which accompanied the somewhat general recession in commodity prices in the Spring of 1926 and which involved a heavy inventory write-off at the end of that quarter";
- (b) "the forest fire in the Company's Pennsylvania timberlands which destroyed over 14,000,000 feet of cut and peeled logs and entailed a net loss of about \$245,000, besides occasioning added expenses in interrupted mill operations";
- 30 (c) Expenditures for improvements in connection with the re-adjustment of the Company's business "effected in 1926" which "will be reflected in subsequent years."

FOR THE PERIOD JANUARY 1, 1927 TO JUNE 22, 1927 (Six Months)

Total Net Income before deducting Interest and Discount on Bonds:

For three months ended March 31, 1927 (N. Y. Stock Exchange Listing Papers)	\$790,835.27
For period April 1, 1927 to June 22, 1927 (3 Months) (Company's report for period)	695,611.18

40 Total for period January 1, 1927 to June 22, 1927 (6 Months).....	\$1,486,446.45
as compared with dividend requirements on Preferred Stock (7% per annum) 3½%.....	\$1,165,466.75

The earnings as above shown are after deduction of depletion (\$1,164,475.80 in 1925; \$1,128,688.74 in 1926) and the cash realized from operations was larger than the amounts shown above by the amount of depletion charged off.

The operating results, as above shown, achieved during a period in which trade conditions were not particularly favorable— (it was only in the 1926 Annual Report—page 5—that mention was made of the reduction of leather inventories to normal), together with the statement contained in the 1925 Annual Report (page 5) to the effect that “the Company is now in a position to begin to realize profits at least equivalent to the present Preferred Stock dividend requirements, and that profits should materially improve as the general conditions in the industry improve,” indicates that the normal earnings of the Company were more than sufficient to cover, and sufficiently large to warrant the payment of the dividend of 7% per annum on the Preferred Stock.

The predominant position of the Company, (the Company being “the largest and leading factor in the heavy leather industry in the United States owning approximately one third of the tanning capacity and marketing about the same proportion of the total volume of sales of the country”—see Bond Circular,) in an essential industry is a further factor assuring satisfactory average annual earnings.

CENTRAL LEATHER COMPANY

PLAN OF CAPITAL READJUSTMENT

Notice of a plan of capital readjustment, but giving no details thereof, was contained in the 1925 Annual Report (page 5) dated March 23, 1926.

Under date of October 1, 1926 this plan was submitted to stockholders (see 1926 Annual Report page 5) which plan was declared operative February 25, 1927 at which date there had been

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Exhibit A-13

deposited under said plan 283,786 shares of the Preferred Stock, or more than 85% thereof (see 1926 Annual Report page 5) which amount was increased by June 22, 1927 to shares representing %.

The plan provided for the exchange of Central Leather Company Preferred Stock upon the following basis, viz.:

For each share of Central Leather Company Preferred Stock which was entitled to receive in liquidation or dissolution, par plus accumulated unpaid dividends of \$43.57, a total of \$143.57 per share and which was entitled to receive preferred cumulative dividends of \$7.00 per annum, there was to be received:

	Per Share	Annual Income
Cash	\$5.00	
Prior Preference Stock* ½ share redeemable at \$110 per share entitled to receive cumulative preferred dividends at \$7.00 per year.		
At redemption price of \$110 per share, valued at.....	55.00	\$3.50 Cumulative Preferred
Class A Stock* ¾ share entitled to non-cumulative preferred dividends of \$4.00 per year		3.00 Non-Cumulative Preferred
and to participate with Common Stock in further dividends up to \$2.00 per year entitled to 2/3 of remaining assets; convertible into Common Stock on share for share basis.....		1.50 Participating with Common
*Of new U. S. Leather Co.		

The priority of Central Leather Company Preferred Stock to the assets was thus reduced from \$143.57 per share to \$60.00 per share, a loss of \$83.57 per share, and the preference with respect to cumulative preferred dividends was reduced from \$7.00 per year to \$3.50 per year, a loss of \$3.50 per year.

EFFECT OF PRIORITY OF PREFERRED STOCK AS TO ASSETS

For this loss of priority as to assets of \$83.57 per share, the holder of Central Leather Company Stock received $\frac{3}{4}$ share Class A Stock having no priority and sharing with the Common Stock in the remaining assets upon a basis of $\frac{2}{3}$ for the Class A Stock and $\frac{1}{3}$ for the Common Stock.

10

Upon the basis of the book values at June 22, 1927 (\$55,544,308.28) there could have been a decrease in net assets of approximately \$7,700,000, without affecting the integrity of the preferred stock, i. e.—even if net assets were decreased by this amount, the remaining assets would be equivalent to \$143.57 per share to which the Preferred Stock was entitled.

Net Assets at June 22, 1927	\$55,544,308.28	
Allowing for decrease of	7,736,862.20	20
would leave Net Assets of	\$47,807,446.08	
equivalent to \$143.57 per share of Central Leather Company Preferred Stock.		

Under the "capital readjustment" plan net assets would have to show an increase of approximately \$6,100,000 before the assets applicable to the securities which were to be issued in exchange for the Preferred Stock would be equal in amount to \$143.57 per share of Preferred Stock and a further increase of approximately \$11,600,000, before the same margin of safety for the Preferred Stock was established, i. e.—before the assets applicable to the new securities to be issued in exchange for the old Preferred Stock would amount to the amount of the net assets at June 22, 1927.

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		Applicable to Securities Issued in Exchange for Old Preferred Stock
	Net Assets June 22, 1927 <u>\$55,544,308.28</u>	
10	\$5.00 per share on Preferred Stock (332,990½ shares)	\$ 1,664,952.50 \$ 1,664,952.50
	½ share Class A Stock, computed at redemp- tion price of \$110 per share (332,990½ shares @ \$55)	18,314,477.50 18,314,477.50
	Total	\$19,979,430.00 \$19,979,430.00
	Balance of Assets	35,564,878.28
	2/3 thereof applicable to Class A Stock....	23,709,918.85
	Total Assets, as above	\$55,544,308.28 \$43,689,348.85
20	Increase in Net Assets required so that As- sets will represent equivalent of \$143.57 per share of Preferred Stock.....	6,177,145.84
	2/3 thereof applicable to Class A Stock....	4,118,097.23
	Total	\$61,721,454.12 \$47,807,446.08(a)
	Further increase required so that net assets applicable to new securities to be issued in exchange for old Preferred Stock would be equal to net assets at June 22, 1927, viz., \$55,544,308.28	11,605,293.30
	2/3 thereof applicable to Class A Stock....	7,736,862.20
30	Total	\$73,326,747.42 \$55,544,308.28(b)

- (a) represents \$143.57 per share of Preferred Stock;
(b) represents net assets at June 22, 1927.

The loss by the holders of the old Preferred Stock of priority to assets to the extent of \$83.57 per share is not adequately compensated for by the issue of ¾ share of Class A Stock, and the value of the new securities issued in exchange for the old Preferred Stock does not, therefore, furnish a basis for valuing the old Preferred Stock for which they were issued.

EFFECT OF PRIORITY OF PREFERRED STOCK AS TO DIVIDENDS

The priority of Central Leather Preferred Stock to cumulative preferred dividends was reduced from \$7.00 per year to \$3.50 per year, a loss of \$3.50 per year.

As offsets to this loss in cumulative preferred dividends, the holders of old Preferred Stock would be entitled to receive on the $\frac{3}{4}$ share of Class A Stock, a preferred dividend which, however, was non-cumulative at the rate of \$4.00 per year on Class A Stock, equivalent to \$3.00 on the old Preferred Stock. If the full amount of preferred dividend on Class A Stock of \$4.00 per year were paid, the holder of old Preferred Stock would receive total dividends of \$6.50 (\$3.50 on $\frac{1}{2}$ share Prior Preference Stock, plus \$3.00 on $\frac{3}{4}$ share Class A Stock), so that his loss in income would in that event be only \$0.50 per year. The Class A Stock also shared with the Common Stock in additional dividends to the extent of \$2.00 per year, and if the full amount of this additional dividend were paid, the holder of old Preferred Stock would receive on his $\frac{3}{4}$ share of Class A Stock, additional dividends amounting to \$1.50 per year.

The status of the income of the old Preferred Stockholder under the plan, as compared with the \$7.00 per year cumulative dividends to which he had theretofore been entitled was as follows:

Prior Preference Stock		Class A Stock		Total	Loss or Gain as Compared with \$7.00 per Year on Old Preferred Stock	Common Stock Rate of Dividend
Rate of Dividend	Applicable to $\frac{1}{2}$ Share	Rate of Dividend	Applicable to $\frac{3}{4}$ Share			
\$7.00	\$3.50	-----	-----	\$3.50	Loss \$3.50	-----
7.00	3.50	\$1.00	\$.75	4.25	" 2.75	-----
7.00	3.50	2.00	1.50	5.00	" 2.00	-----
7.00	3.50	3.00	2.25	5.75	" 1.25	-----
7.00	3.50	4.00	3.00	6.50	" .50	-----
7.00	3.50	5.00	3.75	7.25	Gain .25	\$1.00
7.00	3.50	6.00	4.50	8.00	" 1.00	2.00

It will be noted that not until the dividend on the Class A Stock is over \$4.00 per year, does any increase in annual dividends accrue to the holder of the old Preferred Stock, and likewise, that when the dividends on Class A Stock are in excess of \$4.00 per year and an increase does accrue to the holder of old Preferred Stock, there is a more substantial gain to the holder of Common Stock.

It will also be noted that any dividends paid on the Common Stock, would if not thus paid, be available for the payment of arrears on the old Preferred Stock and that the indicated increase in dividends to the holder of the old Preferred Stock is not a real increase for the reason that the additional amount thus paid would be payable to him in any event on account of the cumulative dividends in arrears.

It will thus appear that the loss by the holder of old Preferred Stock of Cumulative dividends of \$3.50 per year per share, is not adequately compensated for by the possible non-cumulative dividends which might be payable on the $\frac{3}{4}$ share of Class A stock which was offered to him in exchange.

CENTRAL LEATHER COMPANY

STOCK EXCHANGE PRICES

The announcement of a proposed plan of reorganization and the deposit of securities thereunder has the following effects upon the price of the stock as quoted on the Stock Exchange:

- (1) It eliminates from trading the stock deposited under the plan, thus narrowing the amount of stock available for trading to a comparatively small amount of the total issue.
- (2) With respect to the stock deposited, the quoted price of certificates of deposit will reflect not the value of the stock deposited, but the value of the securities to be received in exchange for the stock deposited.

(3) It eliminates from the market all prospective purchasers except:

- (a) the purchaser who believes the stock to be received in exchange will be worth more than the quoted price of the old securities, and who therefore buys the old securities in order to deposit them under the plan and to receive the new securities; 10
- (b) the management of the Company or the reorganization managers who might purchase the old stock with a view to depositing it under the plan so as to reduce the dissenting stock to a minimum, and to obtain as large a percentage of stock assenting to the plan as possible;
- (c) the purchaser who believes that the reorganization managers will be sufficiently desirous of purchasing his stock at a price in excess of its cost to him;
- (d) the purchaser who is sufficiently anxious to buy into a law suit to purchase the stock with a view to ascertaining his rights and resorting to litigation in order to protect them; and 20
- (e) the speculator who might purchase as a stock market venture. 30

The announcement of a reorganization plan therefore eliminates from the market the prospective bona fide purchaser who would purchase the stock upon the basis of its intrinsic value, as measured by its asset value, its income return, its present earnings or its prospective earnings. 30

With respect to Central Leather Preferred Stock, stock market prices could not be expected to reflect true value at any time subsequent to March 23, 1926 (when mention of a plan of capital readjustment was published in the 1925 Annual Report) and certainly not after October 1, 1926 (when the plan was submitted to stockholders), after which latter date the bona fide investor was eliminated from the market as a prospective purchaser. The value of the old preferred stock as 40

determined by the equities behind it and its present and prospective earnings ceased to be a determining factor as affecting stock market prices, and stock market prices as hereinabove stated were determined primarily:

- 10 (1) by the values given to the new securities which were to be issued in exchange under the plan and
- (2) by the price which the reorganization managers or interests affiliated with them might be willing to pay for the stock in order to deposit it under the plan.

A plan of capital readjustment under which the rights of the preferred stockholder as stated in his stock certificate were recognized:

- 20 (1) by the issue of no par value preferred stock having the same privileges as the old preferred stock in exchange for the old preferred stock;
- (2) by the issue of no par value common stock in exchange for the old common stock; and
- (3) by making provision for the settlement of cumulative dividends in arrears upon the old preferred stock either by the issue of new securities having a preference over the old common stock, or in part by the issue of such securities and in part by a cash payment on account of such arrears,

30 would have resulted in making future earnings available for the payment of dividends on the old preferred stock and in establishing the market prices of the new securities issued in exchange for the old preferred stock at the full value of the old preferred stock. The prices that would have been established in such an eventuality would have constituted the "full market value" of the old preferred stock.

Exhibit A-14.**CENTRAL LEATHER COMPANY****STOCK MARKET PRICES OF NEW SECURITIES**

As an indication of the equities and earning power of the Company, the prices of the new securities of U. S. Leather Co. are of interest. These prices are as follows (October 8, 1927) :

10

U. S. Leather Co. Prior Preference.....	102-1/2
" " " " Class A	46-1/8
" " " " Common	23-3/8

The Prior Preference Stock is receiving dividends of \$7.00 per annum and the price trend indicates that as the stock becomes more "seasoned" it will approach its callable price of \$110 per share.

The Class A Stock is not receiving dividends, and its price of 46 indicates a realization of the fact that earnings are sufficient to warrant the payment of dividends whenever the management of the Company sees fit to take such action.

20

The Common Stock has advanced from a low price of 7 in November, 1926 (for the old common stock exchanged for new common on a share for share basis) to its present price of 23, an advance of over 200%. This advance might reasonably be ascribed to a realization that the equities both as to assets and as to earnings of which the old preferred stock was deprived and which now accrue to the common stock.

30

The retirement of the Funded Debt from the proceeds of the timber operations, and the retirement of the Prior Preference Stock by call at \$110 per share, would leave the Class A Stock as the premier security of the Company. The provision for the conversion of the Class A Stock into Common Stock on a share for share basis indicates that the management of the Company realizes the possibility that the Common Stock has a potential earning power of over \$6.00 per share. Conversion

40

of Class A Stock which is entitled to receive \$6.00 per share per year at a time when the Common Stock receives only \$2.50 per share per year would not be advantageous until dividends on the Common Stock were in excess of \$6.00 per year.

- 10 The equities both with respect to assets and with respect to earnings which have accrued and which may in the future accrue to the Common Stock are equities which (to the extent that the old Preferred Stock receives less than the equivalent of \$143.57 per share) have been taken from the old Preferred Stock.

Exhibit A-15.

CENTRAL LEATHER COMPANY

20

"MERGER AND CONSOLIDATION"

The entire Capital Stock of the old U. S. Leather Co. (\$100,000) was owned by Central Leather Company.

The Balance Sheet of the old U. S. Leather Co. at June 22, 1927 showed the following condition:

30	Total Assets	\$ 5,093,783.17
	Total Liabilities (including amount due Central Leather Co.)	16,411,348.04
	Excess of Liabilities over Assets.....	<u>\$11,317,564.87</u>
	Capital Stock	\$ 100,000.00
	Deficit	<u>11,417,564.87</u>
	Excess of Liabilities over Assets.....	<u>\$11,317,564.87</u>

The old United States Leather Co. as a separate entity was insolvent.

40

The issue of stock of the new U. S. Leather Co. in exchange for stock of the old U. S. Leather Co. (which stock was issued to Central Leather Co. as the holder of the stock of the old U. S. Leather Co. and which in effect immediately reverted to the new U. S. Leather Co. when it acquired the assets of Central Leather Company) represented merely a bookkeeping transaction in a plan and device intended to deprive the preferred stockholders of Central Leather Co. of the rights granted to them as contained in their stock certificates.

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Exhibit R-1.

STATEMENT SHOWING

- A. High and low market prices of Central Leather Stock during each of the years 1919-1923, both inclusive.
- B. High and low market prices of Central Leather Stock during each month in the years 1924, 1925 and 1926 (to June 30th) and the volume of trading.
- C. High and low market prices of Central Leather Stock for each week from June 30, 1926, to July 1, 1927, and the volume of trading.

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30

A.

Year	Common		Preferred	
	Low	High	Low	High
1919	56½	116½	104½	114
1920	30½	104¾	80¼	108½
1921	22⅞	43¼	57⅞	96
1922	29⅜	44⅞	63⅜	82¾
1923	9⅞	40½	28⅞	79¾

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Exhibit R-1

B.

	1924	COMMON		Number of Shares Sold	PREFERRED		Number of Shares Sold
		Low	High		Low	High	
10	January	13 $\frac{3}{8}$	17 $\frac{3}{8}$	60,400	37 $\frac{1}{2}$	44 $\frac{5}{8}$	50,120
	February	13 $\frac{5}{8}$	17 $\frac{7}{8}$	39,700	35 $\frac{1}{8}$	44 $\frac{7}{8}$	41,100
	March	9 $\frac{7}{8}$	15 $\frac{1}{4}$	70,200	29 $\frac{1}{4}$	44	179,800
	April	10 $\frac{5}{8}$	14	16,600	36	42 $\frac{1}{4}$	57,100
	May	10 $\frac{1}{4}$	12 $\frac{1}{2}$	9,700	36 $\frac{3}{4}$	43 $\frac{1}{2}$	42,600
	June	10 $\frac{7}{8}$	13 $\frac{1}{2}$	14,700	40 $\frac{5}{8}$	47 $\frac{1}{2}$	40,200
	July	12 $\frac{3}{4}$	14 $\frac{3}{8}$	18,400	44	49	37,200
	August	13 $\frac{1}{8}$	15 $\frac{7}{8}$	21,900	47	52 $\frac{3}{4}$	30,000
	September	13 $\frac{1}{2}$	15 $\frac{1}{4}$	11,400	45 $\frac{1}{2}$	50	24,900
	October	13 $\frac{3}{8}$	15 $\frac{3}{4}$	16,900	40 $\frac{1}{4}$	47 $\frac{3}{8}$	35,300
	November	13 $\frac{7}{8}$	20 $\frac{7}{8}$	83,300	45 $\frac{1}{4}$	54 $\frac{1}{4}$	101,700
	December	18	21 $\frac{5}{8}$	67,900	50 $\frac{5}{8}$	58 $\frac{1}{4}$	68,100
20	1925						
	January	18 $\frac{1}{2}$	20 $\frac{3}{4}$	29,100	55	58 $\frac{5}{8}$	47,200
	February	18 $\frac{1}{4}$	21 $\frac{3}{4}$	34,200	55 $\frac{3}{4}$	66	75,600
	March	14 $\frac{3}{4}$	19 $\frac{5}{8}$	24,700	49 $\frac{1}{4}$	61 $\frac{1}{4}$	39,100
	April	15	17 $\frac{1}{4}$	14,100	52	58 $\frac{1}{8}$	39,300
	May	16	20 $\frac{5}{8}$	41,100	52 $\frac{7}{8}$	64	71,500
	June	16 $\frac{3}{4}$	18 $\frac{3}{8}$	9,000	57 $\frac{3}{8}$	63	16,000
	July	17 $\frac{1}{4}$	20 $\frac{1}{4}$	48,700	59 $\frac{1}{2}$	65 $\frac{1}{2}$	81,400
	August	17 $\frac{1}{8}$	19 $\frac{1}{4}$	15,700	59	64 $\frac{1}{8}$	24,000
	September	17 $\frac{5}{8}$	20 $\frac{3}{4}$	54,800	59 $\frac{1}{4}$	64 $\frac{1}{4}$	28,310
	October	18 $\frac{1}{2}$	23 $\frac{3}{8}$	105,100	61	71	97,600
	November	18 $\frac{3}{4}$	21 $\frac{5}{8}$	36,300	62	70 $\frac{7}{8}$	65,200
	December	18 $\frac{3}{8}$	20 $\frac{7}{8}$	26,850	63	67 $\frac{1}{2}$	32,700
30	1926						
	January	18 $\frac{1}{8}$	20 $\frac{1}{2}$	28,200	62 $\frac{1}{2}$	68 $\frac{3}{4}$	59,300
	February	17 $\frac{1}{2}$	20 $\frac{1}{4}$	25,300	60 $\frac{3}{4}$	67 $\frac{7}{8}$	48,800
	March	11 $\frac{1}{8}$	17 $\frac{5}{8}$	46,900	47 $\frac{1}{8}$	63 $\frac{3}{4}$	71,000
	April	8 $\frac{1}{4}$	13 $\frac{3}{8}$	45,500	43 $\frac{1}{4}$	50 $\frac{7}{8}$	50,500
	May	7 $\frac{1}{8}$	10 $\frac{3}{8}$	20,100	44 $\frac{5}{8}$	53 $\frac{3}{8}$	34,000
40	June	9 $\frac{1}{8}$	11	14,100	49 $\frac{5}{8}$	59 $\frac{3}{4}$	74,800
	Week	Common		Preferred		Number	
	Ending	Low	High	Low	High	of Shares Sold Common Preferred	
	7/ 2/26	9 $\frac{1}{8}$	9 $\frac{3}{4}$	55 $\frac{1}{4}$	56 $\frac{7}{8}$	1100	1100
	7/ 9/26	9 $\frac{1}{8}$	9 $\frac{1}{2}$	53 $\frac{3}{8}$	55 $\frac{1}{4}$	1500	900
	7/16/26	9 $\frac{1}{8}$	9 $\frac{1}{2}$	53 $\frac{3}{8}$	56 $\frac{7}{8}$	1500	6900
	7/23/26	8	9 $\frac{1}{8}$	52 $\frac{5}{8}$	58	2500	2000
	7/30/26	8 $\frac{1}{2}$	9 $\frac{1}{4}$	51	54 $\frac{1}{8}$	1900	4900
	8/ 6/26	8 $\frac{1}{2}$	9 $\frac{1}{8}$	53	55 $\frac{3}{8}$	2300	5100
	8/13/26	7 $\frac{3}{4}$	8 $\frac{3}{4}$	51 $\frac{5}{8}$	54	1100	2400

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Exhibit R-1

Week Ending	Common		Preferred		Number of Shares Sold		
	Low	High	Low	High	Common	Preferred	
8/20/26	7¾	8¾	51½	53¼	1100	2400	10
8/27/26	7¾	9	51⅞	55⅞	1600	5200	
9/ 3/26	9	11⅜	55¾	60½	12200	35600	
9/10/26	9	10⅜	57	60⅜	7100	24500	
9/17/26	8½	10	56½	59½	1200	9600	
9/24/26	8¾	9½	56½	58	1800	5800	
10/ 1/26	8⅝	9¼	56¼	60¼	3200	17300	
10/ 8/26	8½	9¼	57	59¾	1800	21000	
10/15/26	8	8¾	55½	57⅞	2000	6100	
10/22/26	7⅜	8¼	50⅞	55½	1800	11900	
10/29/26	7¾	8⅜	51⅞	54	1900	3300	20
11/ 5/26	7¾	8⅜	51¾	53	500	1800	
11/12/26	7	7¾	49¾	53¾	4700	10400	
11/19/26	7½	8¼	50¼	52	3300	4100	
11/26/26	8	8½	51⅞	53⅝	1000	3500	
12/ 3/26	7¾	8½	52	54⅝	500	2400	
12/10/26	7¾	8⅞	51½	52⅞	2600	1200	
12/17/26	7¾	8⅞	51½	53½	1300	2700	
12/24/26	7¼	7¾	51½	53⅞	3700	5900	
12/31/26	7½	8	52½	54½	2500	2100	
1/ 7/27	8⅝	10¾	54½	58¼	9900	7400	30
1/14/27	9⅝	10¾	54	57½	4000	2500	
1/21/27	8¾	9¾	54	56	700	1200	
1/28/27	8¾	9½	55½	56⅞	800	3800	
2/ 4/27	9	9⅞	55½	58	1600	3300	
2/11/27	9¾	10¾	58⅜	63	2900	13700	
2/18/27	9½	10⅞	61	66	600	7700	
2/25/27	9¼	10	64⅞	66½	1200	2200	
3/ 4/27	9¼	9⅞	62½	65⅝	1400	1900	
3/11/27	9½	9⅞	60	63	700	400	
3/18/27	9¼	9⅝	60	64½	600	1700	40
3/25/27	9½	10⅜	61¾	67	2500	2200	
4/ 1/27	10	10½	66	72	1600	4700	
4/ 8/27	9⅝	10½	68½	72	1900	2400	
4/15/27	9½	10	68	70½	200	100	
4/22/27	9¾	10¾	68	72	2700	1000	
4/29/27	9¾	10¾	68	72	800	600	
5/ 6/27	9⅞	10½	68	70¾	1000	300	
5/13/27	10¼	10⅞	70	72	800	900	
5/20/27	10½	10⅞	-----	-----	400	-----	
5/27/27	10⅞	17⅞	71⅞	75	15000	2500	40
6/ 3/27	14½	16	75	77½	1000	900	
6/10/27	13	16	-----	-----	800	-----	
6/17/27	-----	-----	-----	-----	-----	-----	
6/24/27	13½	15¾	72	76	1900	800	
7/ 1/27	12½	15½	70	76	800	100	

Exhibit R-2.

(Extract from Affidavit of E. E. Beach.)

IN CHANCERY OF NEW JERSEY.

10

Between

JOHN WINDHURST,
Complainant,
and

CENTRAL LEATHER COMPANY and others,
Defendants.

On Bill, &c.
AFFIDAVIT OF
E. E. BEACH.

20

State of New York, }
County of New York, } ss.:

E. E. BEACH, being duly sworn according to law, on his oath, deposes and says:

30

1. I reside in 52 Mountain Ave., Summit, N. J. and am Assistant Secretary of Bankers Trust Company of New York City. Bankers Trust Company was and is depositary under the Plan for the readjustment of the share capital of Central Leather Company dated October 1, 1926. I was in general charge, for Bankers Trust Company, of the receipt of deposits of stock under said Plan.

2. Set forth below are the total number of shares of the Preferred and Common Stock respectively of Central Leather Company which had been deposited with said depositary up to the close of each calendar month beginning with October, 1926, and the percentages which such deposits respectively bear to the total number of outstanding shares of Preferred Stock, namely, 332,990, and of Common Stock, namely, 397,010—

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Exhibit R-2

Month	Preferred Stock		Common Stock		
	Shares	Percentage	Shares	Percentage	
1926					
October	50,042	15.02%	35,541	8.95%	10
November	217,004	65.16%	253,797	63.92%	
December	237,518	71.32%	292,570	73.69%	
1927					
January	252,956	75.96%	302,640	76.22%	20
February	283,761	86.21%	308,806	77.78%	
March	288,604	86.67%	317,334	79.93%	
April	294,956	88.51%	324,067	81.62%	
May	296,183	88.87%	326,878	82.33%	
June	302,878	90.95%	329,480	83.01%	
At close of busi- ness July 19th	308,141	92.53%	337,219	84.93%	

30

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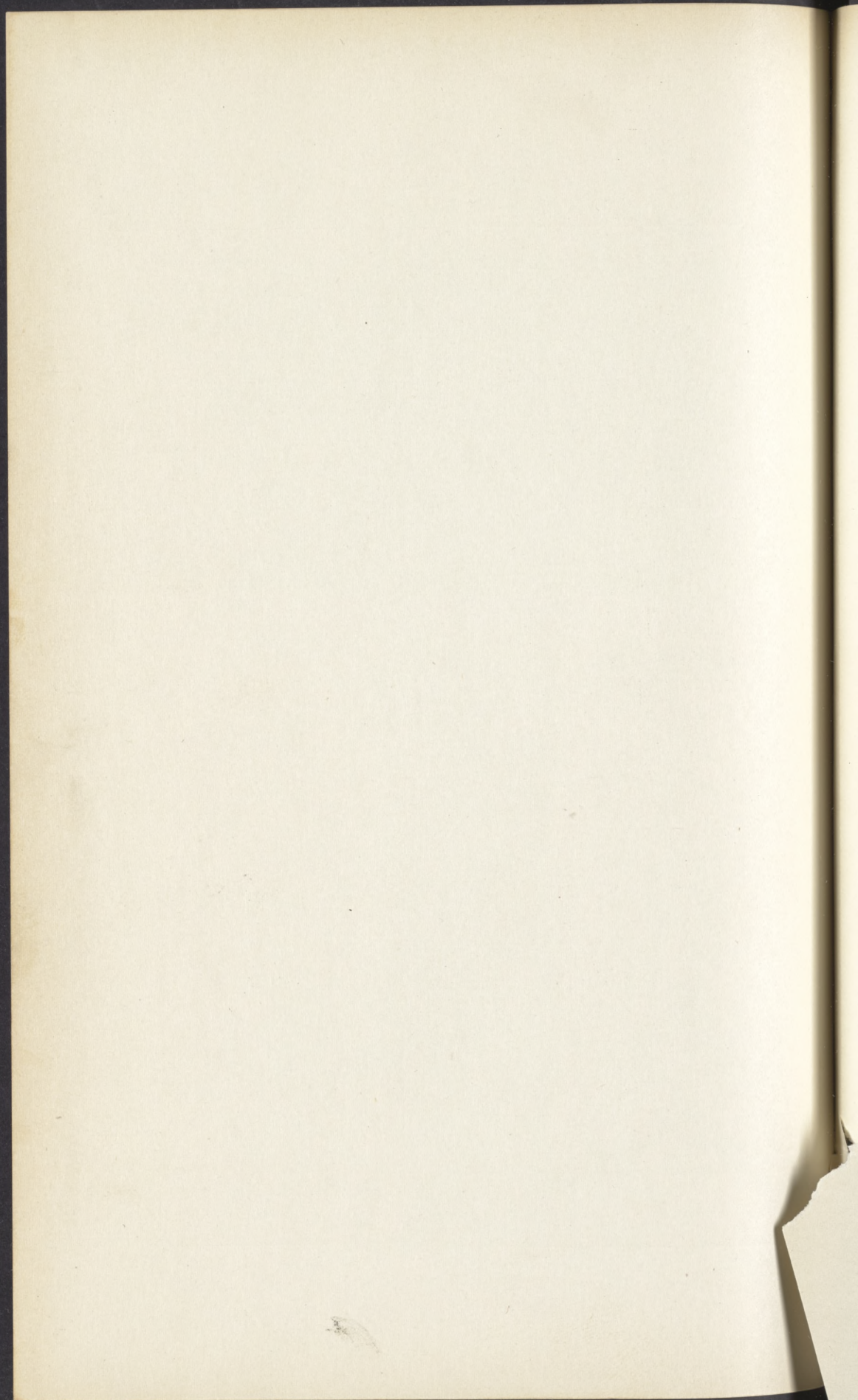


Exhibit R-3.**CENTRAL LEATHER COMPANY**

Including The United States Leather Company (Original Company) and Other Subsidiaries

Annual Net Earnings, Bond Interest, Net Earnings after Bond Interest, Bond Discount, Dividends, Surplus Adjustments and Surplus—to June 22nd, 1927

Period	Net Earnings	Central Leather Company Bond Interest	Net Earnings after Bond Discount	Preferred	Dividends Common	Total	Total Bond Interest, Bond Discount, Dividends and Surplus Adjustments	Surplus
Twenty Months, 1893-4	\$ 726,472.97	\$	\$ 726,472.97	\$	\$	\$	\$	\$ 726,472.97
Year 1895.....	9,359,833.40		9,358,833.40	3,687,000.00		3,687,000.00	3,687,000.00	6,399,306.37
" 1896.....	2,017,037.49X		2,017,037.49X	663,780.00		663,780.00	663,780.00	3,718,488.88
" 1897.....	3,237,372.09		3,237,372.09	2,494,069.00		2,494,069.00	2,494,069.00	4,461,791.97
" 1898.....	1,821,921.31		1,821,921.31	2,960,250.50		2,960,250.50	2,960,250.50	3,323,462.78
" 1899.....	4,947,600.72		4,947,600.72	3,115,884.00		3,115,884.00	3,115,884.00	5,155,179.50
" 1900.....	2,281,510.55		2,281,510.55	3,736,188.00		3,736,188.00	3,736,188.00	3,700,502.05
" 1901.....	5,888,455.45		5,888,455.45	3,740,281.75		3,740,281.75	3,740,281.75	5,848,675.75
" 1902.....	4,595,588.61		4,595,588.61	3,736,938.00		3,736,938.00	3,736,938.00	6,707,326.36
" 1903.....	14,563,753.32		14,563,753.32	3,736,938.00		3,736,938.00	3,736,938.00	17,534,141.68
" 1904.....	4,402,807.33		4,402,807.33	3,736,938.00		3,736,938.00	3,736,938.00	18,200,011.01
" 1905.....	6,331,093.25	359,784.58	5,971,308.67	3,411,752.50		3,411,752.50	3,771,537.08	20,759,567.18
" 1906.....	6,552,697.34	1,692,591.39	4,860,105.95	2,431,128.50		2,431,128.50	4,123,719.89	23,188,544.63
" 1907.....	5,005,339.77	1,724,410.00	3,280,929.77	2,443,399.25		2,443,399.25	4,167,809.25	24,026,075.15
" 1908.....	5,276,099.68	1,726,330.00	3,549,769.68	2,442,811.00		2,442,811.00	4,169,141.00	25,133,033.83
" 1909.....	6,882,365.54	1,964,429.37	4,917,936.17	2,414,840.75		2,414,840.75	4,379,270.12	
							\$22,993,496.02	4,642,633.23
" 1910.....	3,547,896.35	2,053,387.50	1,494,502.85	2,330,930.00		2,330,930.00	4,384,317.50	3,806,206.03
" 1911.....	2,304,649.36	2,009,467.50	295,181.86	2,330,930.00		2,330,930.00	4,340,397.50	1,770,457.94
" 1912.....	7,735,891.93	1,999,007.50	5,736,884.43	2,330,930.00		2,330,930.00	4,329,937.50	5,176,412.37
" 1913.....	6,269,079.83	1,882,735.17	4,386,344.66	2,330,930.00	793,998.80	3,124,928.80	5,007,663.97	6,437,828.23
" 1914.....	6,715,130.89	1,838,207.50	4,876,923.39	2,330,930.00	1,191,028.18	3,521,958.18	5,360,165.68	7,792,793.44
" 1915.....	8,465,104.04	1,838,207.50	6,626,896.54	2,330,930.00	1,588,037.62	3,918,967.62	5,757,175.12	10,500,722.36
" 1916.....	17,327,408.55	1,838,207.50	15,489,201.05	2,330,930.00	3,275,325.90	5,606,255.90	7,444,463.40	20,383,667.51
" 1917.....	16,243,062.36	1,838,207.50	14,404,854.76	2,330,930.00	3,573,081.00	5,904,011.00	7,742,218.50	28,884,511.27
" 1918.....	8,314,641.77	1,838,207.50	6,476,434.27	2,330,930.00	2,779,063.00	5,109,993.00	6,948,200.50	30,250,952.54
" 1919.....	16,126,688.78	1,838,207.50	14,288,481.28	2,330,930.00	3,573,081.00	5,904,011.00	7,742,218.50	
							\$88,126,149.12	30,509,273.70
" 1920.....	20,590,005.50X	1,838,207.50	22,428,213.00X	2,330,930.00	992,522.50	3,323,452.50	5,161,660.00	4,757,608.20
" 1921.....	9,230,486.33X	1,838,207.50	11,068,693.83X	582,732.50		582,732.50	2,420,940.00	6,893,818.13D
" 1922.....	3,366,416.70	1,838,207.50	1,528,209.20				1,838,207.50	5,365,608.93D
" 1923.....	5,434,035.44X	1,838,207.50	7,272,242.94X				1,838,207.50	12,637,851.87D
" 1924.....	1,353,900.85	1,838,207.50	484,306.65X				1,838,207.50	13,122,158.52D
" 1925.....	2,695,814.59	*1,082,938.60	1,612,875.99	A147,800.00		A147,800.00	1,230,738.60	
							°°7,397,891.06	19,054,973.59D
" 1926.....	1,494,919.58	812,010.00	682,909.58	A148,000.00		A148,000.00	960,010.00	18,520,064.01D
Six Months ended June 22nd, 1927	1,486,446.45	422,154.66	1,064,291.79				422,154.66	17,455,772.22D
							\$°38,517,536.20	
Totals	\$148,048,392.50	\$37,949,528.77	\$110,098,863.73	\$71,270,961.75	\$17,766,138.00	\$89,037,099.75	\$126,986,628.52	\$17,455,772.22D

§Amount Charged to Surplus to
cover sundry adjustments.§§Amount Charged to Surplus
in reduction of Property
Account.°°Amount Charged to Surplus,
September 30th, 1925, in
reduction of Fixed and
Current Assets.Memorandum of Revaluation
Year 1903 \$13,477,657.71
Year 1904 757,540.39Total \$14,235,198.10
°Total of Surplus Adjustments.
A Discount on Bonds.X Loss
D Deficit*Interest on Old Bond Issue (5%) \$ 197,699.03
Interest on New Bond Issue (6%) 885,239.57

\$1,082,938.60

New York, September 28th, 1927.

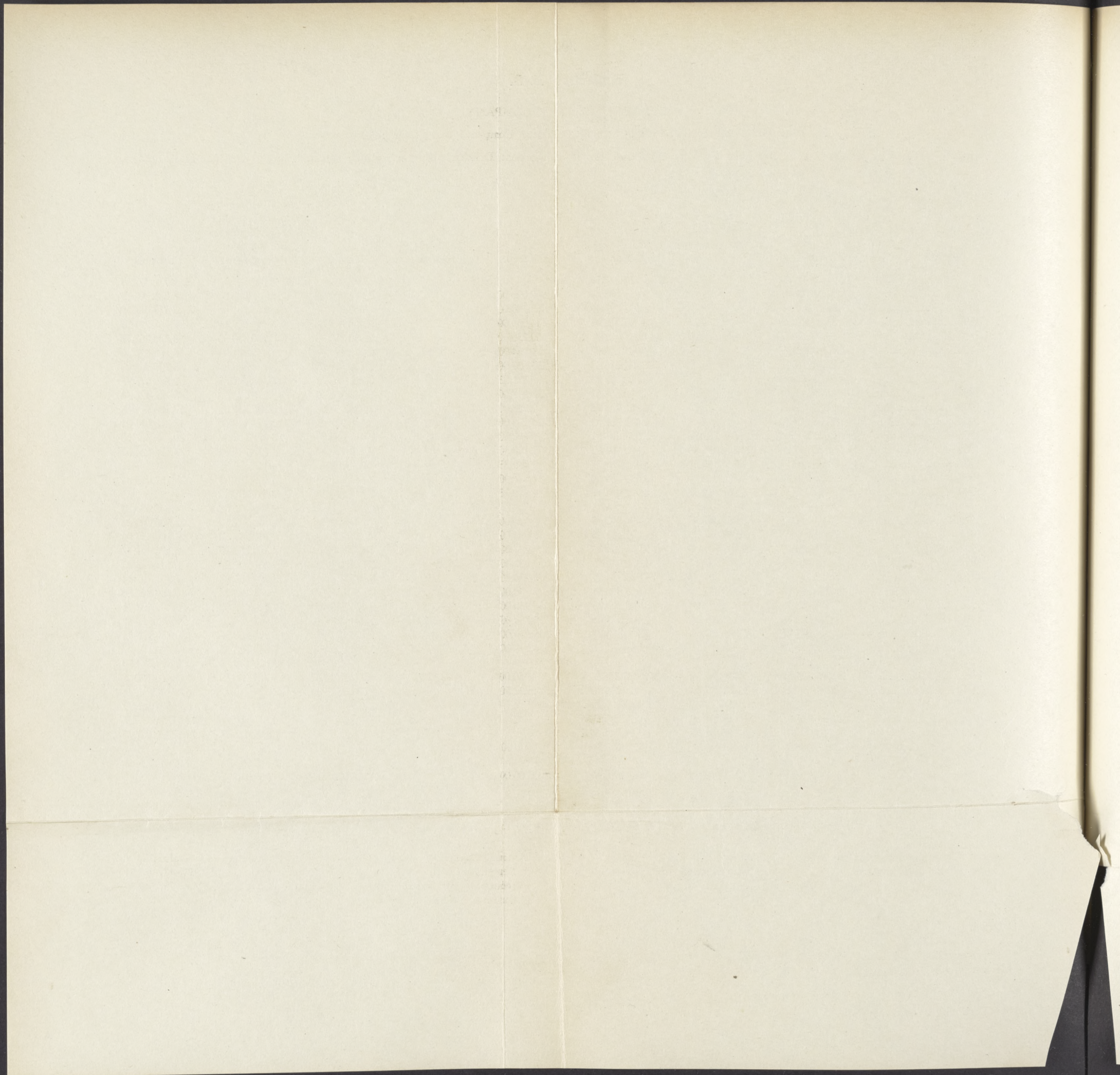


Exhibit R-4.

CENTRAL LEATHER COMPANY Consolidated Balance Sheet—June 22nd, 1927

ASSETS

Property Account, including Timber Lands, Railroads, Tannery Plants and plants engaged in Lumber, Glue and other Allied Industrial Operations			
			\$20,910,783.77
Investments:			
Central Leather Company, First Lien Sinking Fund Bonds, at face value	\$ 3,755,000.00		
Other Investments	6,262,907.53	10,017,907.53	
Sinking Fund:			
Cash with Trustee	\$ 709,392.02		
Accrued	421,432.25	1,130,824.27	
Current Assets:			
Inventories:			
Leather in Stores, Lumber and other Finished Products	\$ 7,153,545.72		
Hides and Leather, Raw and in Process, Bark, Extract and all other Materials	16,390,796.70		
	\$23,544,342.42		
Accounts Receivable	\$5,244,313.74		
Bills Receivable	588,962.40		
Liberty Bonds	24,123.85		
Call Loans	7,500,000.00		
Cash in Banks and on hand	1,687,322.72	15,044,722.71	38,589,065.13
Deferred Charges to Profit and Loss			1,418,044.12
Deficit			17,455,772.22
			\$89,522,397.04

LIABILITIES

Capital Stock:			
*Preferred	\$33,299,050.00		
Common	39,701,030.50	\$73,000,080.50	
First Lien Sinking Fund Six Per Cent Bonds:			
Issued	\$15,000,000.00		
Less, Retired Through Sinking Fund	2,576,000.00	12,424,000.00	
Current Liabilities:			
Accounts Payable	\$ 1,556,495.53		
Interest Accrued on Bonds	356,154.66		
Sinking Fund Accrual	421,432.25	2,334,082.44	
Reserves:			
Fire Insurance	\$ 875,000.00		
Marine Insurance	100,000.00		
Liability Insurance	100,000.00		
Miscellaneous	689,234.10	1,764,234.10	
			\$89,522,397.04

*Cumulative dividends are in arrears since April 1st, 1921.
New York, September 28th, 1927.

Exhibit R-5.

CENTRAL LEATHER COMPANY AND SUBSIDIARY COMPANIES
Sales—Years 1910 to 1926 and Six Months ended June 22nd, 1927, inclusive

		Sale, Belting & Harness Leather Sides	Hemlock Lumber Feet	Hardwood Lumber Feet	Glue Pounds	Grease Pounds	Tankage Pounds	Volume of Business
Year	1910.....	10,054,439	185,472,785	17,654,691	3,805,738	2,100,451	2,471,120	\$ 55,640,382.91
"	1911.....	9,794,812	163,474,256	16,535,920	2,977,730	2,743,852	2,360,420	52,991,240.30
"	1912.....	11,013,826	164,249,134	24,278,728	3,708,939	2,044,291	2,627,820	66,854,413.49
"	1913.....	8,844,194	129,031,691	44,434,596	3,883,777	3,298,809	3,021,980	59,586,498.38
"	1914.....	8,449,138	90,139,373	41,451,719	2,792,847	3,036,246	4,014,613	60,814,902.67
"	1915.....	8,835,431	159,386,367	42,884,103	5,080,120	3,053,288	2,759,500	68,917,939.12
"	1916.....	10,062,530	165,140,404	38,667,382	8,591,881	3,849,358	4,226,440	93,247,551.66
"	1917.....	7,271,831	158,880,954	40,868,356	4,426,588	3,691,416	3,587,080	91,731,547.73
"	1918.....	8,477,137	117,276,108	30,574,728	3,970,228	3,262,147	3,104,660	94,147,418.10
"	1919.....	7,985,862	111,664,881	40,844,636	5,115,253	3,957,376	2,619,699	118,959,634.16
"	1920.....	4,024,703	63,884,452	42,587,340	3,785,453	2,334,091	2,262,568	66,225,551.94
"	1921.....	4,761,546	72,182,657	17,190,473	1,634,716	2,286,583	59,740	43,189,551.95
"	1922.....	6,248,398	92,032,301	33,687,543	3,517,442	5,303,227	1,149,180	55,249,114.23
"	1923.....	5,707,972	87,294,698	40,868,490	3,656,378	3,299,054	1,390,700	52,826,919.50
"	1924.....	5,314,747	81,783,819	40,501,026	2,856,349	3,433,898	902,880	41,483,791.73
"	1925.....	4,109,737	95,968,826	57,269,859	3,311,455	2,907,450	871,730	41,122,551.09
"	1926.....	4,304,704	92,463,712	54,288,998	3,879,725	3,720,772	1,268,371	37,904,584.49
Six Months ended June 22nd, 1927		2,109,490	43,088,557	25,497,830	1,860,742	2,878,349	907,202	18,569,403.51
New York, September 28th, 1927.								

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Exhibit R-5

Exhibit R-6.

CENTRAL LEATHER COMPANY AND SUBSIDIARIES History of Special Depreciation Reserve

Profit and Interest on Bonds Purchased from Appropriations authorized by Board of Directors and Interest Monies.

Date	Profit	Interest	Total
December 31st, 1913.....	\$ 32,000.00	\$	\$ 32,000.00
December 31st, 1914.....	18,450.00	29,550.00	48,000.00
December 31st, 1915.....	6,837.50	70,162.50	77,000.00
December 31st, 1916.....	27,425.20	112,112.50	84,687.30
December 31st, 1917.....	36,390.30	164,312.50	200,702.80
December 31st, 1918.....	42,697.90	224,437.50	267,135.40
December 31st, 1919.....	21,615.00	288,500.00	310,115.00
December 31st, 1920.....	94,250.00	355,275.00	449,525.00
December 31st, 1921.....	149,752.20	428,262.50	578,014.70
December 31st, 1922.....	43,975.50	499,075.00	543,050.50
December 31st, 1923.....	41,994.90	566,775.00	608,769.90
December 31st, 1924.....	25,823.00	640,775.00	666,598.00
January 1st, 1925.....		169,187.50	169,187.50
Totals	\$486,361.10	\$ 3,548,425.00	\$4,034,786.10

Less:

Amounts used to offset approximate Losses by Elk Tanning Company and Union Tanning Company on the sale of the following Tanneries:

December 31st, 1921 Cedar Run and Laporte	\$218,000.00		
December 31st, 1922 Bruce (Glade)	227,000.00		
December 31st, 1923 Middlebury (Star H)	119,000.00		
December 31st, 1924 Ladew	288,000.00		
December 31st, 1924 Reynoldsville	300,000.00		
December 31st, 1924 Wallin	26,000.00	1,178,000.00	1,178,000.00
Totals	\$486,361.10	\$ 2,370,425.00	\$2,856,786.10

40	30	20	10
September 30th, 1925 (A) Bond Interest Suspense		1,284.43	1,284.43
do (B) Bond Earning Suspense	44,900.37		44,900.37
Total of Reserve, September 30th, 1925	\$531,261.47	\$ 2,371,709.43	\$2,902,970.90
Less:			
Disposition of the above Reserve,—			
Used to offset Loss taken by Elk Tanning Company on Plants Abandoned		\$2,024,721.85	
Used to offset Loss taken by Union Tanning Company on Plants Abandoned		\$638,208.85	\$2,662,930.70
Used to offset Loss taken by Susquehanna & New York Railroad Company on Tank Cars			14,322.41
Reserve set up to protect Materials and Supplies, Machinery, Tools, Bark, Extract etc., from loss by Reduction in Value or Shortage in Quantity			225,717.79
			\$2,902,970.90

\$Elk Tanning Company

Tanneries:	Loss
Columbia	\$ 216,924.69
Falls Creek	391,143.87
Forrest	223,977.62
Hillsgrove	168,672.87
Horton	108,801.35
Monroeville	227,542.62
Reynoldsville	4,285.44
Ridgway	116,434.21
Sinnamahoning	248,811.21
Wallace	139,343.44
Wyoming	63,321.11
Extract Works:	
Clarion	62,404.43
Galeton	2,327.69
Powell	50,751.30
Total	\$2,024,721.85

\$\$Union Tanning Company

Tanneries:	Loss
Ladew	\$ 3,574.80
Moshannon	165,607.45
Rib Lake	42,439.29
Tennessee	301,973.52
Wausau	53,976.02
Extract Works:	
Franklin	12,107.26
Rib Lake	17,195.22
Wallin	48,484.89
Total	\$ 638,208.85

(A) Interest Earnings on Bonds Purchased during 1925

(B) Earnings on Bonds in Treasury, January 19th, 1925.

Exhibit R-7.

THE UNITED STATES LEATHER COMPANY

Balance Sheet

ASSETS

	September 30th, 1926		May 31st, 1927		June 22nd, 1927	
Property:						
Elizabeth Plant	\$ 337,089.56		\$ 312,716.05		\$ 312,716.05	
Less Reserve	29,684.50	\$ 307,405.06	33,774.40	\$ 278,941.65	34,145.23	\$ 278,570.82
Richmond Store	\$ 25,000.00		\$ 25,000.00		\$ 25,000.00	
Less Reserve	374.94	24,625.06	708.30	24,291.70	738.85	24,261.15
Plants		268.03		298.53		298.53
Personal Property		4,839.38		8,597.80		8,682.14
Investments:						
Manns-Owens Stock		1.00		1.00		1.00
Current Assets:						
Inventories:						
Leather in Stores	\$3,582,376.34		\$2,836,609.17		\$2,834,154.78	
Materials and Supplies	16,439.05	3,598,815.39	18,717.70	2,855,326.87	21,907.03	2,856,061.81
Accounts Receivable:						
The United States Lea. Co. of Mass	\$1,105,311.59		\$ 559,920.29		\$ 629,443.87	
N. R. Allen's Sons Leather Co.	49,432.74		78,298.60		45,581.50	
Leather Customers	1,379,043.47		942,280.75		1,160,358.28	
Sundry	17,721.40	2,551,509.20	19,007.33	1,599,506.97	16,369.11	1,851,752.76
Suspense	\$ 1,312.04		\$ 16,354.78		\$ 16,266.26	
Less Reserve		1,312.04		4,771.83		4,683.31
Bills Receivable		528.00		478.00		478.00
Cash		159,184.02		92,830.81		68,849.09
Prepaid Taxes				4,255.95		144.56
DEFICIT		11,144,790.75		11,432,014.70		11,417,564.87
		\$17,793,277.93		\$16,301,315.81		\$16,511,348.04

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30

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10

311
Exhibit R-7

	40	30	20	10
LIABILITIES				
Capital Stock		\$ 100,000.00	\$ 100,000.00	\$ 100,000.00
Current Liabilities:				
Accounts Payable:				
Central Leather Company	\$ 731,661.28		\$1,222,834.36	\$1,398,425.35
Union Tanning Company	164,270.91		164,397.01	164,699.26
Elk Tanning Company	75,326.64		80,639.73	80,639.73
N. R. Allen's Sons Company	612,785.96		643,849.27	663,403.09
Northeastern Coal Company	95.68			
Current	50,590.43		53,506.09	59,944.93
Accrued Discount	54,058.50		36,089.35	44,235.68
Unpaid Taxes	4,488.53	1,693,277.96	2,201,315.81	2,411,348.04
Central Leather Company Note		16,000,000.00	14,000,000.00	14,000,000.00
		\$17,793,277.93	\$16,301,315.81	\$16,511,348.04

New York, July 25th, 1927.

Exhibit R-9.

CENTRAL LEATHER COMPANY

Consolidated Profit and Loss Account for Period—
January 1st, 1927 to June 23rd, 1927.

The Total Earnings of all Properties after deducting expenses incident to operations, including those for repairs and maintenance (\$459,094.12), depreciation (\$213,291.60) and taxes amounted to	\$2,628,434.48	10
Less, Expenses and Losses of all Companies	1,245,801.03	
	\$1,382,633.45	
Add, Income from Investments	103,813.00	
	\$1,486,446.45	
Deduct:		
Interest on Bonds	\$356,154.66	
Discount on Bonds	66,000.00	422,154.66
Balance to Surplus	\$1,064,291.79	
New York, October 11th, 1927.		20

Exhibit R-10.

MAINTENANCE AND REPAIRS

1913	\$1,166,891.29	
1914	1,322,279.07	
1915	1,390,091.35	
1916	1,654,110.96	
1917	2,234,559.33	30
1918	2,474,638.99	
1919	2,707,729.48	
1920	2,797,663.07	
1921	1,812,935.79	
1922	1,845,952.43	
1923	2,228,452.02	
1924	1,365,656.33	
1925	1,495,070.37	
1926	845,307.44	
1927—Period Ending June 22, 1927	459,094.12	40
New York, October 6th, 1927.		

**Exhibit R-12—Extracts from Annual
Report for the Fiscal Year Ended
December 31, 1920.**

To the Stockholders of Central Leather Company:

10 The Annual Report for the year 1920, prepared
in the usual manner by the Committee appointed
by your Board of Directors, gives in financial form
the results of a year unprecedented in the history
of the leather industry as well as in that of other
basic industries. The very extensive losses, stated
or anticipated, in all major industries are known
and recognized; but it is deemed appropriate to
refer briefly to the precipitate and unprecedented
losses in the leather industry. The distinct ad-
20 vance in the prices of raw material and finished
leather which was resumed in December, 1919, con-
tinued and increased during the first two months
of 1920. Our sales and advance orders in January
and February of last year for active domestic con-
sumption exceeded our supply and our production
for some months in advance and raw material was
therefore provided. The abnormally severe winter,
the almost complete break-down of the transporta-
tion system of the country, the delays in delivery,
and the cancellation of orders with the cessation
30 of retail buying, all worked to produce by early
summer a condition of almost complete stagnation
in our industry, in common with or possibly beyond
that in others. This situation made impossible a
liquidation so obviously advisable. Confronted by
this condition,— which, in short, resulted in a pre-
cipitate fall in the price of raw material and prac-
tically no market for finished products,—the man-
agement decided on the drastic policy of almost
complete closing of its tanneries. From May until
40 November we reduced purchases of hides to a
minimum and liquidated inventories where possi-

ble. Not until November, when prices had reached or passed pre-war levels, did we again purchase hides in quantity. During this period the prices of finished products declined on a very restricted market. The inventories of finished products,—necessarily large in a company of our size,—have been marked down successively to meet the market declines. The result has been an inventory loss on leather sold and unsold, which has absorbed a very great part of the surplus. On December 31st, 1920, this Company had practically no commitments for purchase of raw materials. 10

The business of the Lumber Companies was profitable during the greater part of the year, but in the closing months the lumber industry experienced the extreme depression prevalent in other lines, with the consequent cessation of orders and declines in values. The business of the Glue Company also was profitable during the major part of the year, but with a similar though not so acute decline in the closing months. 20

Inventories have, in conformity with the established practice of the Company in making its quarterly and annual reports and tax returns, been taken at conservative market prices for finished products and cost for materials and stocks in process. As shown by the annual report, the Directors have, however, deemed it advisable to provide a reserve of \$5,500,000 to further protect inventories. While the opening month of the year 1921 has not brought sufficient improvement in business to afford a basis for profitable operations your Directors feel that the action taken has placed the Company in a position where profits will be possible as soon as the improvement in general business conditions creates a more nearly normal demand for leather. 30
40

10 Your Directors have endeavored to reflect in the annual report the extent of the losses incurred and the present condition of your Company at the end of a year unparalleled in the history of the business. Severe as the losses have been, your Directors deem it proper to state their confident belief in the basic value and strength of the assets and resources of the Company; recovery of these losses must depend on a general business advance.

Respectfully submitted,

GEORGE W. CHILDS,
President.

Dated, New York, February 15th, 1921.

20

**Exhibit R-13—Extracts from Annual
Report for the Fiscal Year Ended,
December 31, 1921.**

To the Stockholders of Central Leather Company:

30 The Annual Report for the year 1921 prepared in the usual form by your Board of Directors, reflects the difficult and subnormal general business conditions of the year. It had been hoped at the beginning of the year that with reduction in prices of raw materials and continued effort in reducing manufacturing costs the industry would reach a profitable basis of operations. General conditions, however, did not improve and with the continued curtailment in purchasing by the public, the absence of export trade and stocks of finished leather consequently increasing, further losses
40 were inevitable. Toward the latter part of the year

some slight improvement in the general conditions of the trade was evidenced and your company was enabled to show a small profit for the last quarter.

The business of your affiliated companies has been similarly affected by the adverse conditions. The increase anticipated in building operations did not materialize, and lumber values have receded, thus preventing the lumber companies operating at a profit. The Glue Company likewise suffered from the general restriction in manufacturing. The Railroad Companies show improvement over the preceding year, although the major railroad did not fully recover from the effects of the change back from Government control. In conformity with the established practice of the company, inventories have been taken at conservative market prices for finished products, and at cost for stocks in process and materials. 10 20

The company has been able to go through the trying period of the last two years without any new financing other than current borrowings. Bills payable are one million dollars less than at the close of 1920, and one million five hundred thousand dollars less than the high point of borrowing in the early months of 1921. The company has also bought for its Sinking Fund requirements approximately one million five hundred thousand dollars par value of its bonds. Increases shown in the balance sheet in foreign drafts and accounts payable represent purchases of foreign hides and tanning materials made towards the close of the year, payments for which were not due until a later date. 30

The Board of Directors, in continuation of the plan announced in the annual report for the year 1913 for the partial retirement of outstanding bonds of the company at the date of maturity, 40

April 1st, 1925, appropriated a further amount of one million dollars from stumpage money which has been invested in the bonds of the company. Income and earnings from this special fund to December 31st, 1921 amounting to \$1,829,180.20, are carried as a special reserve for depreciation.

- 10 As shown by the annual report, there are \$355,500.00 of bonds in the treasury available for appropriation to the special fund in the year 1922.

Under existing conditions it would be difficult and useless to endeavor to forecast the future. Given however, a return of better general conditions with public buying resumed and an export outlet for a percentage of the surplus of finished stocks, the tanning industry should gradually return to normal.

20

Respectfully submitted,

GEORGE W. CHILDS,
President.

Dated, New York, February 14th, 1922.

- 30 **Exhibit R-14—Extracts from Annual Report for the Fiscal Year Ended, December 31, 1922.**

To the Stockholders of Central Leather Company:

The Annual report for the year 1922 prepared in the usual manner by your Board of Directors shows in financial form the progress made during the year, the earnings by quarters being as follows:

40

Quarter Ending March 31st, 1922 ...	\$ 229,334.87
Quarter Ending June 30th, 1922.....	60,519.59
Quarter Ending September 30th, 1922	1,217,626.08
Quarter Ending December 31st, 1922	1,858,936.16

\$3,366,416.70

10

After deducting the Bond Interest of \$1,838,-207.50 there remains a profit of \$1,528,209.20 which applied to the capital account reduces the deficit in capital to \$5,365,608.93. As shown by the statement of quarterly earnings the business of the company during the first six months continued unsatisfactorily but in the last six months there was a marked improvement and the present outlook for 1923 is favorable. The business of the Lumber and Glue Companies also improved. In conformity with the established practice of the company, inventories have been taken at conservative market prices for finished products, and at cost for stocks in process and materials.

20

The strong Current Asset condition of the company has been maintained. The Current Assets of \$63,858,023.20 remain at about the same amount as at the close of 1921. Outstanding Bonds have by purchase been further reduced by the sum of \$1,679,900. Bills Payable have been reduced by \$4,000,000 from the amount owing at the close of 1921. The substantial increase in foreign drafts and accounts payable represent large purchases of hides and tanning materials made towards the close of the year, payments for which were not due until a later date. The excess of Current Assets over Current Liabilities is \$52,604,790.72, and the excess of Current Assets over all Liabilities including outstanding bonds is \$27,955,040.72.

30

The Board of Directors in continuation of the plan announced in the Annual Report for the year

40

1913 for the partial retirement of outstanding bonds of the company at the date of maturity, April 1st, 1925, appropriated a further amount of \$1,000,000 from stumpage money which has been invested in the bonds of the company. Income and earnings from this special fund to December 31st, 10 1922, amounting to \$2,145,230.70 are carried as a special reserve for depreciation. As shown by the Annual Report, there are \$719,400 of bonds in the treasury available for appropriation to the special fund in the year 1923.

Respectfully submitted,

GEORGE W. CHILDS,
President.

20 Dated, February 20th, 1923.

**Exhibit R-15—Extracts from Annual
Report for the Fiscal Year Ended
December 31, 1923.**

To the Stockholders of Central Leather Company:

30 The Annual Report for the year 1923, reflects the continued severe depression in the sole leather industry which has continued, with only a slight interruption, for over three years. In view of the heavy losses which the Company has sustained during the past twelve months, it is appropriate, at this time, to make a less formal statement than has been customary, for the purpose of explaining to the stockholders the great difficulties under which this Company and the entire sole leather industry are now laboring.
40

The stockholders understand, of course, that the operations of the Central Leather Company comprise about one-third of the tanning output of sole and belting leather in the country. We have numerous tanneries, in various parts of the country, which were being operated practically to their commercial capacity prior to and during the period of the war. Our average sales for the years 1910 to 1919, inclusive, were over 9,000,000 sides of leather per annum, those sales including an important export trade which we had carefully built up from the earliest days of the Company. 10

It must also be kept in mind that the tanning business is one which, by its very nature, requires the purchase of raw material far in advance, since a large proportion of our hides must be bought in foreign countries, and the actual tanning process, even after the hides reach this country, is a matter of months under the most favorable conditions. 20

When prices suddenly collapsed in 1920, all tanners found themselves in possession of large stocks of high priced leather and of equally high priced hides in process of tanning, and very heavy losses in inventory were absolutely unavoidable, but no one foresaw the long period of depression which has been encountered since that date. Every tanner was in a position which required the most economic manufacture possible, and no one was willing to increase his costs by drastically reducing his output, except as a matter of last resort. The Central Leather Company did cut down its workings materially but the trade, as a whole, acted upon the theory that the depression was temporary and that consumption and business conditions generally would again become normal within a reasonably short period. General production was therefore maintained and, since the export 30 40

trade has not revived at all, a serious over-production has resulted. At the end of 1921, the stock of finished sole and belting leather in the hands of American tanners amounted to about 11,500,000 sides. This was fully double the normal stock. This situation was further aggravated by the fact that some of the hide producers and dealers when hides accumulated excessively, converted their hides into leather under tanning contracts resulting in a further increase of finished leather to over 12,000,000 sides. Before really satisfactory conditions could be looked for, this surplus had to be worked off, but no substantial progress has been made in that direction during the last two years. On January 1st, 1923, according to Government statistics, the stock of sole and belting leather on hand amounted to approximately 9,600,000 sides; on July 1st, 1923, to 10,000,000 sides; and on December 31st, 1923, to 10,500,000 sides.

At the beginning of the year 1923 there was a considerable demand for leather, and prices advanced, but, before the middle of the year, the demand again fell away and, with this large surplus on hand, prices again declined, disastrously.

The hide market has also been exceedingly unstable during the past year. The prices were high at the beginning of the year, only to be followed by a sudden and heavy drop, with the low prices lasting practically to the end of the year. This drop in hides had the effect which it always has, of unsettling the market for finished leather.

The conditions which prompted your Directors to curtail manufacture have at last brought about a generally reduced production but it was not until the latter part of 1923 that the rate of operations was sufficiently reduced to correspond reasonably with market conditions, and, because of the length

of time of the tanning process, that reduction has not yet been reflected by a corresponding reduction in the finished stock.

Heretofore, as customary among sole leather tanners, in the taking of our inventories at the end of a year, finished leather has been valued at market prices, but hides and stock in process and tanning materials have been valued *at cost*. This year they have all been valued at *market prices* as of December 31st, 1923. Since that date, the prices of both hides and leather have advanced. 10

Your Directors are not unmindful of the natural anxiety now felt by the stockholders, nor of their desire for something approaching a definite statement as to what may be anticipated in the future. It must be admitted, however, that prophecy at the present moment is a difficult undertaking. We do not believe that any one, however experienced in the tanning industry, can, today, foretell just how soon the leather business will again show satisfactory earnings. There are, however, certain fundamental facts which must always be kept in mind. Tanning is a basic industry and after a period of losses sufficiently long, surplus production must end, if for no other reason, because of the ruthless application of economic laws. 20

An examination of the figures which accompany this report will show that the current asset position of the Company is a strong one. On December 31st, the Company had an excess of current assets, over all liabilities, including outstanding bonds, of about \$23,000,000, without any reference whatever to the value of our timber lands, our plants and our investments. 30

The business and earnings of the Lumber Companies during the year were good and the prospects are that the demand will continue and that the year 1924 will also show good results. 40

10 The Board of Directors, in continuation of the plan announced in the Annual Report for the year 1913 for the partial retirement of outstanding bonds of the Company at the date of maturity, April 1st, 1925, appropriated a further amount of \$1,000,000 from stumpage money, which has been invested in the bonds of the Company. Income and earnings from this special fund to December 31st, 1923, amounting to \$2,635,000.60 are carried as a special reserve for depreciation. As shown by the Annual Report, there are \$1,486,700 of bonds in the treasury, available for appropriation to the special fund in the year 1924.

Respectfully submitted,

20

GEORGE W. CHILDS,
President.

Dated, February 19th, 1924.

**Exhibit R-16—Extracts from
Amended Certificate of Incorporation
of Central Leather Company.**

30 ARTICLE FOURTH.—The total authorized capital stock of the corporation is eighty million dollars (\$80,000,000) divided into eight hundred thousand (800,000) shares of the par value of one hundred dollars (\$100) each.

Of said capital stock four hundred thousand (400,000) shares, aggregating forty million dollars (\$40,000,000) par value shall be preferred stock; and four hundred thousand (400,000) shares, aggregating forty million dollars (\$40,000,000) par value, shall be common stock.

40

From time to time the preferred stock and the

common stock of the corporation may each or both be increased according to law as now or hereafter enacted, provided, always, that at no time shall the preferred stock be increased without the assent of the holders of at least two-thirds in interest of the then outstanding preferred stock of the corporation. And said preferred stock and said common stock as herein fixed, and any duly authorized increase of either or both, may be issued at such times and in such amounts and proportions as shall be determined by the board of directors and as may be permitted by law. 10

The holders of the preferred stock shall be entitled to receive or to have set apart, out of the surplus or net profits of the corporation, as and when declared by the board of directors, a dividend at the rate of, but never exceeding, seven per centum per annum, cumulative, on all such preferred stock outstanding at the time, which dividend shall be payable yearly, half-yearly or quarterly as the board of directors may, from time to time fix and determine, and before any dividend shall be set apart for or paid on the common stock. Provided, however, that if the preferred stock shall hereafter be increased, the rate of dividend upon such increase shall be at such rate, not exceeding seven per centum per annum, as shall be fixed by the resolution of the stockholders of the corporation authorizing such increase. Whenever a dividend is declared or paid on the preferred stock and all prior dividends on the outstanding shares of such stock shall have been paid or set apart, the board of directors may, if in its judgment the surplus or net profits, after deducting the amount of dividends to accrue on the said outstanding preferred stock during the current year, shall be sufficient for such purpose, then or thereafter declare 20 30 40

and pay dividends on the common stock, payable yearly, half-yearly or quarterly, and payable then or thereafter out of any remaining surplus or net profits of the year then current or last past and of any previous year in which full dividends shall have been paid on the preferred stock.

- 10 In case of a liquidation or dissolution or winding up (whether voluntary or involuntary) of the corporation the holders of the preferred stock shall receive cash to the amount of the par value of such preferred stock, together with all accrued and unpaid dividends thereon (but no more) before any payment is made to the holders of the common stock, and the holders of the common stock shall be solely entitled to the entire assets of the company, or the proceeds thereof, remaining after the payment in full, at its par value, of the preferred stock
- 20 then outstanding, together with all dividends thereon accrued and unpaid.

30

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Memorandum.

HUDSON COUNTY CIRCUIT COURT.

In the Matter
of

The Application of Horace G. Prall, and
others, stockholders of Central Leather
Company, a corporation of New Jersey,
dissenting from the merger and consoli-
dation of the said Central Leather Com-
pany with the United States Leather
Company, a corporation of New Jersey,
for the appointment of appraisers to ap-
praise the full market value of their
stock.

10

In the Matter
of

The Petition of A. Hicks Lawrence and
George F. Upham for the appointment of
appraisers, etc.

20

LINDENWOOD FEMALE COLLEGE, a corpora-
tion, etc.,

Petitioner,

v.

CENTRAL LEATHER COMPANY and UNITED
STATES LEATHER COMPANY, corporations,
etc.,

30

Respondents.

The three above entitled causes were instituted
for the purpose of having an appraisement of the
full market value of the Preferred Stock of the pe-
titioners in the Central Leather Company, who are
dissenting from the merger and consolidation of
said Company with the United States Leather Com-
pany, both corporations of the State of New Jersey.

40

The proceedings are pursuant to Section 108a of the General Corporation Act of New Jersey (P. L. 1902, p. 700, amended P. L. 1920, p. 284).

10 Upon the filing of the petitions, an Order was made by this Court appointing three appraisers, pursuant to the foregoing statute, who proceeded with their duties and on January 20, 1928, filed their report wherein they fixed the full market value of said Preferred Stock at the time of the consummation of the merger or consolidation of the above companies at \$71 per share.

20 On February 3, 1928, consent orders were signed, discontinuing the last two of the three above-entitled causes, but reserving the question of compensation to appraisers, and on January 21, 1928, a Notice of Motion to confirm the report of the aforesaid appraisers was served upon the attorneys for the petitioners in the matter of the application of Horace G. Prall, et als., stockholders of the Central Leather Company, etc. (the petitioners in the only case which has not been discontinued), which notice was returnable February 3, 1928, upon which date the last above-mentioned petitioners appeared and objected to the confirmation of the aforesaid report.

30 Voluminous briefs have been filed by counsel on each side, which disclose great research and a masterly presentation of the subject involved and have been very instructive and helpful to the Court. Reduced to fundamentals, however, the objection of the dissenting stockholders may be summarized in the claim that the appraisers in fixing the value of the Preferred Stock involved in this matter, have been influenced by stock market quotations, where-
40 as it is claimed that the Preferred Stock of the dissenting stockholders of the Central Leather Company, upon the merger or consolidation, is entitled

to preference as to assets to the amount of its par value, plus accrued unpaid dividends, equivalent on June 23, 1927, which is the date of consolidation or merger, to \$143.57 per share. In other words, the claim of the petitioners is that under the statute in question the preferred stockholders are entitled to the value of net assets of the company represented by their shares, and that the appraisers should have taken the book value or asset value of the Preferred Stock, as upon a dissolution, up to the amount of the par value thereof, plus accrued unpaid dividends. The Company insists, however, that the mandate of the statute is clear and unequivocal and that the petitioners are only entitled to the market value of their stock, as of the date when the consolidation took effect, as determined by sales of the stock in the open market, and therefore, the value fixed by the appraisers is correct. 10 20

In support of their contention, the dissenting stockholders claim that the preferred stock of the Central Leather Company was, under the provisions governing its issue, "in case of the liquidation or dissolution or winding up (whether voluntary or involuntary) of the corporation," to receive "Cash to the amount of the par value of such Preferred Stock, together with all accrued and unpaid dividends thereon (but no more) before any payment to the holders of the Common Stock," and was entitled to cumulative preferred dividends at the rate of 7% per annum, and it might be added that the par value of the preferred stock was \$100 per share, and that the arrearages of unpaid dividends at the rate of 7% per annum amounts to \$43.57. It is insisted, therefore, that the petitioners are entitled to their respective investments, plus accrued dividends, because that is the value put into the company by the original holders of the 30 40

stock, which value is maintained so long as the assets remain, and that this is so, because of the contract arising between the corporation and its stockholders upon the issuance of the stock, and that a merger or consolidation is equivalent to a winding up or dissolution of the company, and hence it would be a violation of the contract between the corporation and the stockholders if the latter were to receive upon a consolidation or merger, less than the par value of their stock, plus unpaid dividends.

This argument would have undoubted force, if the above-mentioned provisions governing the issuance of the preferred stock were the only provisions included in the contract between the corporation and its preferred stockholders; but it is elementary that statutes (pertaining to corporations) existing at the time of incorporation, are to be read into the contract of incorporation, as part of it, and under this doctrine, provisions of existing laws for the increase of capital stock and for a change in the nature of the business, and provisions for the purchase of property with stock, etc., constitute part of the contract between the stockholders. *Smith v. Eastwood Wire Mfg. Co.*, 58 N. J. Eq., 331 at 333; *Meredith v. Zinc & Iron Co.*, 10 Dick. Ch. Rep., 211, 218, affirmed in 11 Dick. Ch. Rep. 454. And in *Pronik v. Spirits Distilling Company*, 42 Atl. Rep. 586, it was said that the same rule was to be applied to the general powers of amendment of certificates of incorporation and of the other contractual rights arising out of and based upon such certificates and the stock issued thereunder, authorized at the time of organization, and the same doctrine was recognized in the cases of *Allen v. Francisco Sugar Co.*, 92 N. J. Eq., 431.

At the argument of this Motion for the confirma-

tion of the Appraisers' Report, it was conceded that Section 108a of the General Corporation Act (P. L. 1902, p. 700, amended P. L. 1920, p. 284), was in existence at the time of the incorporation of the Central Leather Company and of the issuance of the preferred stock involved in this matter, hence the provisions of that section became a part of the contract existing between the corporation and these preferred stockholders, and the pertinent part of that section regarding the rights of dissenting stockholders in a corporation merging or consolidating with another corporation reads as follows:

"If any stockholder in any of said merging or consolidating corporations not voting in favor of such agreement of merger or consolidation, shall dissent therefrom and shall refuse or neglect to convert his stock into the stock of such consolidated corporation, or to dispose thereof in the manner and on the terms specified in such agreement, such dissenting stockholder, or such consolidated corporation may, at any time within thirty days after the adoption and filing of the agreement of consolidation, apply by petition to the circuit court of the county in which the chief office of the corporation, whose stockholder shall so dissent or neglect, was or is located, on reasonable notice to be prescribed by said court to said consolidated corporation for the appointment of three disinterested appraisers to appraise the full market value of his stock without regard to any depreciation or appreciation thereof in consequence of the said merger or consolidation."

It will be seen, therefore, that the stockholders have agreed, as a part of the contractual obligation

as among themselves and with the corporation, that in the event of a merger or consolidation, that they or the consolidating corporation may, within thirty days after consolidation, apply to the Circuit Court for the appointment of appraisers to appraise the *full market value* of the stock of any dissenting stockholder, and inasmuch as these petitioners have themselves applied for the appointment of the appraisers in this case, they certainly must be bound by the contractual obligations arising out of the provisions of the aforesaid section of the statute.

And so, although it may be true that the preferred stock certificates, or the certificate of incorporation, may provide that "in case of the liquidation or dissolution or winding up (whether voluntary or involuntary) of the corporation," the owners of the preferred stock are to receive "cash to the amount of the par value of such preferred stock, together with all accrued and unpaid dividends thereon (but no more) before any payment to the holders of the common stock, etc.," nevertheless, these provisions are to be read in connection with the other terms of the contract arising out of incorporation, which include the provisions of Section 108a above quoted. Hence the "liquidation or dissolution or winding up (whether voluntary or involuntary) of the corporation" referred to in the certificates of preferred stock or the certificate of incorporation, does not include the status arising from a merger or consolidation, and it was never intended that the "full market value" specified in Section 108a of the General Corporation Act, should mean the par value of stock with all accrued and unpaid dividends thereon, as otherwise the specification that dissenting stockholders should receive "full market value" would have been entirely unnecessary, and it is never to be presumed that

the legislature expressly gave a distinct standard of valuation for no purpose whatsoever.

This being so it remains for the court to interpret the meaning of "full market value" as applied to the stock of the dissenting stockholders in this case.

Certainly the legislature never intended that dissenting preferred stockholders, upon the merger or consolidation of their corporation with another corporate body, should receive back their investment in full with accrued but undeclared dividends, regardless of the market value of their investment at the time of merger or consolidation, as otherwise the statute would have been so worded, instead of providing specifically that the appraisal of the stock should be at its "full market value." 10

Clearly the book value of stock is not an accurate guide as to what participation the stock may have in the funds realized from the liquidation of the assets of the corporation. Experience justifies the assertion that upon the winding up of a corporation and the sale of its assets, much less is realized for stockholders than the book valuation of the assets would apparently justify. Under the statute, these dissenting minority stockholders could never have insisted upon an actual dissolution of the old company and a liquidation of its assets, and as its charter was perpetual, who could say at any given time, with any degree of certainty, what the stockholders would receive upon actual liquidation? And certainly a merger or consolidation of the corporation with another corporate body under the provisions of the statute does not contemplate that the assets of the merging or consolidating company shall be reduced to money and distributed to the minority stockholders. So we may conclude that, although the preferred shares of stock involved in 20 30 40

this controversy might possibly have had a book valuation on June 23, 1927, of \$143.57 per share, this is no proof of its real value at that time.

As was said by Chancellor Runyon in *Douglas v. Mercedes*, 25 E. J. Eq., 144:

10 "The market price of a commodity is the actual price at which it is commonly sold. That price may be fixed by sales in market at or about the time. If no sales can be shown on the precise day, and for that inquiry after the day, and for that inquiry a reasonable range in point of time is allowable." * * *

20 "The question to be determined is, what could the complainant, if he had owned the stock and had been willing to sell it, have got for it in the market, from a person willing to buy? Or, what price would he have been compelled to pay for it then? It is not to be forgotten that the enterprise was a speculation." * * *

30 "There are two kinds of value, intrinsic and market. But there is often a wide difference between intrinsic value and market value. So great is this difference that intrinsic value is not admissible in evidence as indicating what a commodity should sell for at a specified time under particular circumstances, if bona fide market value can be established. 'The intrinsic value of a stock is not only not an infallible guide to its price in the market, but is, in fact, no guide at all.' "

40 In speaking of the standard by which value is to be tested, the court in the case of *Dudd v. Van Orden*, 33 N. J. Eq., 143; affirmed 33 N. J. Eq., 364, said:

"The only absolute test we can have of the value of a merchantable article is what it has been sold for at a fair sale. All other means of ascertaining the value of a merchantable commodity are speculative, and must, to a greater or less extent, be uncertain. A sale is a demonstration of the fact, while estimates, even by the best judges, are simply matters of opinion, which, at best, are only approaches to the fact."

10

In the case of *Borg v. International Silver Company*, 11 Fed. (2nd) 147 (Cir. Ct. App. 2nd Cir.) the question arose as to whether the defendant company was selling certain treasury stock for less than its value and the court in answering the question, used this language, which I think correctly states what the legislature contemplated by "full market value" as used in Section 108a of the General Corporation Act above referred to:

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"The suggestion that the book value of the shares is any measure of their actual value is clearly fallacious. It presupposes, first, that book values can be realized on liquidation, which is practically never the case; and, second, that liquidation values are a measure of present values. Every one knows that the value of shares in a commercial or manufacturing company depends chiefly on what they will earn, on which balance sheets throw little light. When all is said, value is nothing more than what people will pay for the shares, given as wide an opportunity for bidders to come in as is reasonably possible."

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It must always be kept in mind that under the provisions of Section 108a *supra*, it is the stock

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which is to be appraised and not the assets of the Company, and for the reasons hereinbefore indicated, the court has reached the conclusion that "full market value" as contemplated by the foregoing statute means nothing more nor less than what an owner willing to sell the stock, would have gotten for it in the market, from a person willing to buy. *Douglas v. Mercedes*, supra. Therefore, the appraisers were justified in basing their report of the "full market value" of this stock, upon actual sales made upon the New York Stock Exchange, within the period contemplated by their report, and their valuation of \$71, per share was the "full market value" thereon on June 23, 1927.

The Court, therefore, confirms the report of the appraisers as of February 3, 1928, the date upon which the notice of motion for confirmation was made returnable, and an order may be presented in accordance with this result.

A further question now arises as to the compensation to be allowed the appraisers and its apportionment among the three above entitled causes.

It is to be noted that Section 108a of the General Corporation Act, although providing for the appointment of three appraisers, makes no express provision for compensation for their services.

It is undoubtedly the rule that there is no inherent power in a court to allow costs in favor of one party as against another, and that costs and fees are creatures of statute and are ordinarily not to be imposed unless provided for by statute. *State v. Walsh*, 44 N. J. L. 470; *Melter v. E. & A. R. R. Co.*, 37 N. J. L. 222. It is to be noted, however, that the above rule has been applied always in cases where the party sought to be charged with costs has been brought into court involuntarily, and not as the result of any contractual obligation to submit

the matter in controversy to the determination of a tribunal. The case last above cited was for the condemnation of land and there, of course, the landowner was brought into court under the right of eminent domain reserved to the state under the constitution, and no provision had been made for the payment of costs. Hence the court could impose none. 10

In the present situation, however, the dissenting stockholders and the corporation by virtue of Section 108a supra, have made the provisions for the appointment of appraisers, and their appraisal of the stock, a matter of contractual obligation, and hence it becomes the duty of the court to construe this contract in order to ascertain whether or not the services of the appraisers therein provided for, are to be paid for, and if so, by whom. Inasmuch as the contractual obligation permits of the appointment of the appraisers and they have been appointed and have performed their duties, naturally an implication arises that they are to receive compensation for their services. And by turning to Section 108a supra, we find that the dissenting stockholders are entitled to receive from the consolidated corporation the "Full market value" of their stock. The implication arises, therefore, that the dissenting stockholders are to receive nothing less than the equivalent of full market value for their stock, and if they are called upon to pay any part of the compensation for the services of the appraisers, they would not be receiving the full value for their shares to which they are undoubtedly entitled. 20 30

The court concludes, therefore, that the appraisers must be paid for their services and that such payment must be made in these cases by the United States Leather Company, under the fair intentment of the statute, as this company has received 40

all of the assets of and is responsible for all the obligations of the Central Leather Company.

10 The only question remaining, therefore, is to fix the amount of the compensation of the appraisers. This has given the court considerable difficulty, in view of the fact that there is so little precedent available by which the value of these services may be gauged.

20 Having in mind, however, the voluminous testimony which was taken upon the subject of the finances and assets of the corporation, in view of the unsettled question as to the meaning of "full market value," and the time necessarily consumed in reading the briefs submitted and in settling their report, and also having in mind the importance and value of the subject involved, and the experience and training of these appraisers, I have reached the conclusion that each one of them should receive from the United States Leather Company, the sum of \$2000, and this amount should be apportioned among the three causes in proportion to the number of shares involved in each, as follows:

In the first of the above entitled causes, \$1611, and in the second of the above entitled causes, \$160, and the third, \$229.

30 And I further conclude that the stenographic bill for taking and typewriting the testimony, etc., should be paid by the United States Leather Company.

HENRY E. ACKERSON, JR.,
Judge.

**Order Confirming Report of
Appraisers.**

(Filed May 4, 1928.)

CIRCUIT COURT OF HUDSON COUNTY.

In the Matter of The Application of HORACE G. PRALL, and others, stockholders of CENTRAL LEATHER COMPANY, a corporation of New Jersey, dissenting from the merger and consolidation of the said CENTRAL LEATHER COMPANY with THE UNITED STATES LEATHER COMPANY, a corporation of New Jersey, for the appointment of Appraisers to appraise the full market value of their stock.	}	10 20
On Petition		

The petitioners, Horace G. Prall, E. Josephine Wilcox, Edwin M. Carter, Frederick S. Cutter, James H. Carter and John H. Dowdell, partners doing business under the name of "Carter & Co."; Barber B. Conable; Frances B. Ackerman, Catherine M. Ackerman, Frederick T. Ackerman, Elizabeth Ackerman, Edward S. Williams, William B. Hibbs and W. W. Spaid, partners doing business under the name of "W. B. Hibbs & Company"; Claire Sondheim, Henry May, executor of the last will and testament of Isabella C. May, de-	}	30 40
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Order Confirming Report of Appraisers.

- ceased; Walton H. Wilcox, James H. G. Mills, Edward L. Burrill, Edward A. Pierce and Edward E. Bartlett, Jr., partners doing business under the name of "E. A. Pierce & Co."; Herbert Gaytes, Benedict H. Gruntal, Albert W. Lilienthal and Morris Hartig, partners doing business under the
- 10 name of "Gruntal, Lilienthal & Co."; Louise W. Clarke, Ralph B. Barnard, trustee of Sewall under agreement dated June 14, 1918; Carrie W. Tower, Arthur G. Parker, Mary E. Parker, Ettie P. Parker, George Soule, as trustee; Cecile R. Weil and Isadore Weil, being holders of preferred stock of Central Leather Company, and having dissented from the merger and consolidation of said Central Leather Company, with The United States Leather Company, a New Jersey corporation,
- 20 tion, under and pursuant to Consolidation Agreement between said corporations, filed in the office of the Secretary of State of New Jersey, on June 23, 1927, and having applied by petition to the Circuit Court of Hudson County (in which the chief office of said Central Leather Company was located), on reasonable notice prescribed by said court to the Consolidated Corporation, The United States Leather Company, for the appointment of three disinterested appraisers to appraise the full
- 30 market value of their stock, without regard to any depreciation or appreciation thereof in consequence of the said merger or consolidation, and the court having appointed Walter P. Gardner, John Milton and Peter A. Eckes, as Appraisers, and the parties having attended by counsel before said appraisers and said appraisers having taken and heard the testimony offered by the respective parties, and having heard and considered the arguments of counsel for the respective parties, and having made
- 40 and filed their report on or about January 20, 1928,

Order Confirming Report of Appraisers.

awarding the sum of \$71 per share of said preferred stock to the petitioners; and the respondent, The United States Leather Company, having applied to the court on notice to the petitioners for an order confirming said report and award, and the court having heard and considered the arguments of counsel for the petitioners and respondent, and application being now made for the settlement of the terms, of and the, making of this order on notice and in the presence of Walter L. McDermott, of counsel for the petitioners, and of Waldron M. Ward, of counsel for the respondent; 10

It is, on this 4th day of May, 1928, on motion of Pitney, Hardin & Skinner, attorneys for the respondent, The United States Leather Company, ORDERED that the said report of said appraisers and the said award of \$71 per share be and are 20 hereby confirmed.

FURTHER ORDERED that all parties having been represented by counsel, appearing in open court, no other or further notice of the filing of said award and of the confirmation thereof by this court need be given by their said petitioners or said respondent, one to the other, and that all parties do take notice of the making and entry of this order.

And it further appearing to the court that notice was served upon the petitioners on January 21, 1928, by the said respondent of its intention to apply to the court on February 3, 1928, for an order confirming said report, and that on February 3, 1928, said respondent did in accordance with said notice, apply to the court in the presence of counsel for the petitioners for such order, and that counsel for the petitioners then requested that a later day be set for argument on said application, and the court having accordingly set the matter down for argument on February 17, 1928 (the 30 40

Order Fixing Appraiser's Compensation.

counsel for the said respondent having at the time of said application on February 3, 1928, as aforesaid, expressly reserved the right to apply for the entry of such order of confirmation *nunc pro tunc* as of February 3, 1928) and the said application having been argued by the respective counsel on
 10 February 17, 1928, and the court having taken time to consider the arguments and briefs of counsel, and it appearing to the court that it is just and proper so to do;

IT IS FURTHER ORDERED that this order and the confirmation of said report and award of said appraisers be entered and take effect *nunc pro tunc* as of February 3, 1928.

HENRY E. ACKERSON, JR.,
 Judge Hudson County Circuit Court.

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**Order Fixing Appraiser's
 Compensation.**

(Filed May 4, 1928.)

HUDSON COUNTY CIRCUIT COURT.

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In the Matter of The Application of HORACE G. PRALL and others, stockholders of CENTRAL LEATHER COMPANY, etc., for the Appointment of Appraisers to appraise the full market value of their stock.	}	On Petition, etc.
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40 This court having, by order made this day, confirmed the award to the petitioning stockholders

Order Fixing Appraiser's Compensation.

made by Walter P. Gardner, John Milton and Peter A. Eckes, the Appraisers heretofore appointed in the above entitled proceedings, and counsel for the petitioners and for the respondent, The United States Leather Company, respectively, having heretofore been heard in the matter of the amount of the compensation of said Appraisers and the payment thereof and the court having considered the matter; 10

IT IS on this 4th day of May, 1928, ORDERED that the compensation of said Appraisers be and hereby is fixed at the sum of \$1,611 each and that the same be paid by the respondent, The United States Leather Company.

FURTHER ORDERED that the fees of the stenographer for taking and transcribing the testimony offered before the Appraisers be also paid by respondent The United States Leather Company. 20

HENRY E. ACKERSON, Jr.,
Judge,
Hudson County Circuit Court.

By stipulation the time for filing reasons for reversal was extended to August 15, 1928. 30

Reasons for Reversal.

(Filed Aug. 15, 1928.)

NEW JERSEY SUPREME COURT,
HUDSON COUNTY.

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HORACE G. PRALL, et al.,
Prosecutors,
vs.

THE UNITED STATES LEATHER
COMPANY,
Defendant.

On Certiorari.

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The prosecutors, by W. L. McDermott, their attorney, come and pray that the award of the appraisers heretofore appointed by the Circuit Court of the County of Hudson upon the application of the prosecutors as preferred stockholders of the Central Leather Company, dissenting from its merger and consolidation with The United States Leather Company, to appraise the full market value of their stock without regard to any depreciation or appreciation thereof in consequence of the said merger and consolidation, and, as well the

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order of the said Circuit Court made the 4th day of May, 1928, confirming the said award, may be reversed and set aside for the following reasons:

1. The stock of the prosecutors was not appraised at its full market value without regard to any depreciation or appreciation thereof in consequence of the said merger and consolidation.

2. The full market value of said stock without regard to any depreciation or appreciation thereof

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in consequence of the said merger and consolidation was shown by the evidence taken by said appraisers to be substantially in excess of \$71 per share.

3. No true appraisalment of said stock was in fact made by said appraisers as required by law. 10

4. In order to determine the full market value of said stock without regard to any depreciation or appreciation thereof in consequence of the said merger and consolidation the said appraisers should have appraised the assets of the said Central Leather Company.

5. The said merger and consolidation effected a dissolution of said corporations and the full market value of said stock without regard to any depreciation or appreciation thereof in consequence of the said merger and consolidation was the value thereof in dissolution, which, as shown by the evidence taken by said appraisers, was substantially in excess of \$71. 20

6. The award of said appraisers was made and confirmed in disregard of the vested rights of the prosecutors which had accrued by the terms of the certificates of incorporation of the Central Leather Company and of the certificates of stock under which said stock was issued whereby it was stipulated that "in case of the liquidation or dissolution or winding up" of the Central Leather Company its preferred stockholders should become entitled to receive "cash to the amount of the par value of such preferred stock, together with all accrued and unpaid dividends thereon (but no more) before payment to the holders of the common stock." 30

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7. The award of said appraisers and said order confirming the said award impaired the vested contractual rights of the prosecutors accruing by virtue of the terms under which said stock was issued, and deprived the prosecutors of property without due process of law.

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8. The said order confirming said award was made upon the ground that "the liquidation or dissolution or winding up (whether voluntary or involuntary) of said Central Leather Company referred to in the certificate of preferred stock or the certificate of incorporation does not include the status arising from a merger or consolidation."

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9. The full market value of said stock without regard to any depreciation or appreciation thereof in consequence of the said merger and consolidation, as shown by the evidence taken by said appraisers was \$143.57 per share, that being the amount of the par value thereof plus the accumulated dividends in arrear thereon.

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10. The price of said stock on the New York Stock Exchange upon which said award was based was not the full market value of said stock without regard to any depreciation or appreciation thereof in consequence of the said merger and consolidation.

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11. The price of said stock on the New York Stock Exchange upon which said award was based was governed not by its full market value without regard to any depreciation or appreciation thereof in consequence of said merger and consolidation but by the value of the securities for which said stock was exchangeable under the terms of the said merger and consolidation.

12. The price of said stock on the New York Stock Exchange upon which said award was based was depreciated in consequence of the said merger and consolidation by the unfavorable terms on which the said stock was exchangeable for new securities under the terms of said merger and consolidation.

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13. The price of said stock on the New York Stock Exchange upon which said award was based did not represent the full market value of said stock without regard to any depreciation or appreciation thereof in consequence of said merger and consolidation because the said Stock Exchange was not a free, normal and unrestricted market for the sale of said stock, for the following reasons:

(a) Because the greater part of the outstanding preferred stock of the said Central Leather Company had been withdrawn from sale on the said Stock Exchange.

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(b) Because the action of the directors of the said Central Leather Company in delaying announcement of the terms of merger and consolidation produced an uncertainty unfavorable to the price of said stock on the said Exchange.

14. The said award and order deprived the prosecutors of their vested and preferred right to the payment of cumulative dividends in arrear and payable upon their said stock.

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15. The said award and the said order are in divers other respects unlawful and erroneous.

W. L. McDERMOTT,
Attorney of Prosecutors.

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Opinion of Supreme Court.

(Filed October 18, 1928.)

NEW JERSEY SUPREME COURT,

No. 208. OCTOBER TERM, 1928.

10	HORACE G. PRALL, et als., Prosecutors, v. THE UNITED STATES LEATHER Co., Defendant.	}	On Certiorari. Opinion.
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20 Argued October 3rd, 1928: Decided October 18th,
 1928.

Before—Justices MINTURN, BLACK and CAMPBELL.

For the Prosecutors: Mr. WALTER L. McDERMOTT
 and Messrs. HENRY W. RUNYON, WALTER E.
 GODFREY and AARON H. MARX of the New York
 Bar.

For the Defendant: Messrs. PITNEY, HARDIN &
 SKINNER and Mr. WALDRON M. WARD.

30 Per CURIAM:

The certiorari in this case was allowed to review
 an order made in the Hudson County Circuit Court.
 The order was dated February 3rd, 1928, it con-
 firmed a report made by three appraisers appointed
 by the court to appraise preferred shares of stock
 owned by the prosecutors in the United States
 Leather Company at \$71 per share.

40 The proceedings are pursuant to Section 108 of
 the General Corporation Act of N. J., P. L. 1896.
 page 312; 1902, page 700, as amended by P. L.

1920, page 284; that statute, provides: "Upon the
 "merger or consolidation of any two or more cor-
 "porations, which do not have the right to exercise
 "any franchise for public use, into a single cor-
 "poration", &c., &c. "For the appointment of three
 "disinterested appraisers to appraise the full
 "market value of his stock without regard to any
 "depreciation or appreciation thereof in conse-
 "quence of the said merger or consolidation." 10

The question presented for solution, Have the
 appraisers fully performed the duty laid upon them
 by the statute? The prosecutors' alleged grievance
 is they have not, while the defendant argues the
 contrary, and cite in support thereof the ap-
 praisers' report dated January 20th, 1928, and the
 order of confirmation by the Circuit Court dated
 February 3rd, 1928. It is also argued that this 20
 court is bound by the decision of the Court of
 Errors and Appeals in the case of *Matter of the*
Condemnation of the Capital Stock of the Morris
Canal and Banking Co., 6 N. J. Adv. R. 987: 141
 A. 784. While it is true, that the proceedings in
 that case were under a different statute, viz. P. L.
 1923, page 210, Sec. 7, and the facts are also some-
 what dissimilar, the statute in that case provides:
 "Three commissioners or appraisers to appraise the
 "full market value of said stock and what damages,
 "if any, should be assessed for the taking of same." 30

The extent and scope of the decision in that case
 is sufficiently comprehensive to include this case, al-
 though, under a different statute, the method con-
 tended for by the prosecutors in this case, for as-
 certaining the full market value of their shares of
 stock, was condemned in that case, as unsound.

The order of confirmation of the Circuit Court of
 Hudson County under review will be confirmed.

Rule of Affirmance.

(Filed November 1, 1928.)

NEW JERSEY SUPREME COURT,
No. 208. OCTOBER TERM, 1928.

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HORACE G. PRALL, et als.,
Prosecutors,

v.

THE UNITED STATES LEATHER
COMPANY,
Defendants.

On Certiorari.

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A writ of certiorari having heretofore been
allowed in the above entitled cause, and the Court
having inspected the record, award, order and pro-
ceedings returned with the certiorari in this cause
and the reasons filed by the prosecutor, and having
heard the arguments of counsel and having duly
considered the same;

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IT IS, on this 1st day of November, 1928,
ORDERED that the proceedings and award of the
appraisers appointed in the said proceedings and
the order of the Circuit Court of Hudson County
confirming the said award be, and hereby are, in
all things affirmed.

Entered: November 1st 1928

On motion of

PITNEY, HARDIN & SKINNER,
Attorneys of Defendant.

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[48609]

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New Jersey Court of Errors and Appeals

HORACE G. PRALL, et al., Appellants, v. THE UNITED STATES LEATHER COMPANY, Respondent.	On Appeal from the Supreme Court.
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BRIEF FOR APPELLANTS.

Statement.

Two New Jersey corporations, the Central Leather Company and The United States Leather Company, were merged and consolidated, as "The United States Leather Company," a new corporation.

The agreement of merger and consolidation provides that these companies "shall be and the same hereby are merged and consolidated into a single corporation which shall be a new corporation under the laws of the State of New Jersey to be formed by means of such merger and consolidation."

The appellants, about thirty in number and owning about 3,500 shares of preferred stock, dissented from the merger and consolidation and applied to the Circuit Court of Hudson County for appointment of appraisers to appraise the full market value of their stock, under section 108a of the General Corporation Act.

Messrs. John Milton, Walter P. Gardner and Peter Eckes were appointed appraisers, and after hearing evidence made a report in which they set forth the reasons upon which they based their appraisal.

The United States Leather Company was a subsidiary of the Central Leather Company, every share of its stock except those qualifying directors being owned by the Central Leather Company. This subsidiary corporation thus merged and consolidated was insolvent, its liabilities exceeding its assets by about \$11,300,000 (Ex. A-15, Case, 300).

By the contract fixing the rights of preferred shareholders of the Central Leather Company contained in the stock certificate and the certificate of incorporation it is prescribed that "in case of the liquidation or dissolution or winding up (whether voluntary or involuntary) of the corporation" preferred shareholders shall receive "cash to the amount of the par value of such preferred stock, together with all accrued and unpaid dividends thereon (but no more) before any payment to the holders of the common stock." The certificate further provided for cumulative preferred dividends at 7% per annum. Both common and preferred shares were of the par value of \$100.

Cumulative dividends on preferred shares are in arrears since April 1, 1921, and the amount thereof in arrears on June 23, 1927, when the merger and consolidation went into effect was \$43.57. By the terms of preference above recited preferred shareholders were entitled "in case of dissolution" to \$143.57 to be paid out of assets "before any payment to the holders of the common stock." Net assets of the Central Leather Company on June 22, 1927, as shown by the balance sheet, were \$55,544,308.28. The par value of preferred shares

issued was \$33,299,050. Therefore, on the books of the company the net assets were equivalent to \$166.80 per share of preferred stock. Case, 283, 293. The appraisers have expressly said that they did not deem it their function to appraise these assets, so that there is no evidence of their value except the Central Leather Company's own declarations contained in its statements to stockholders and the public and the statement of the new company made for the purpose of listing its stock on the stock exchange. Case 183, 197, 49.

The agreement of merger and consolidation (Article V) (Case 264) provides that each holder of preferred stock of the Central Leather Company shall be entitled to receive in exchange therefor from the new corporation formed by the merger and consolidation the following: "(a) fifty dollars (\$50) par value (one-half share) of the prior preference stock of the Company, (b) three-quarters of a share of the class A stock of the Company, and (c) five dollars (\$5) in cash."

In case of dissolution the agreement provides, Article IV (c) that holders of prior preference stock shall be entitled to receive out of assets the par value of their shares plus dividends accrued and unpaid (Case, 255). After such payment to holders of prior preference stock on dissolution two-thirds of all further amounts distributable shall be distributable pro rata among holders of Class A stock, but if there be less than 249,743 shares of Class A stock outstanding at the time of dissolution the holder of such a share shall receive only such part of two-thirds of the assets so distributable as shall be obtained by dividing said two-thirds by 249,743, and the holders of common stock shall be entitled to share ratably in the distribution of the remaining assets (Case, 262).

The agreement further (Article V) provides that each share of common of the Central Leather Company shall be exchangeable for one share of common in the new company, and that after the dividend on the prior preference stock and a sinking fund for its redemption have been set apart Class A stockholders shall be entitled to a preferential (not cumulative) dividend up to \$4 per share. Thereafter the holders of Class A stock share equally with holders of common in all further dividends until the total dividend on Class A shares amounts to \$6 per annum, when its right of participation with the common ceases.

A tabulated comparison showing the terms of exchange will be found at page 292 of the Case. It concludes as follows:

“The priority of Central Leather Preferred stock to the assets was thus reduced from \$143.57 per share to \$60 per share, a loss of \$83.57 per share and the preference with respect to cumulative preferred dividends was reduced from \$7 per share per year to \$3.50, a loss of \$3.50 per year.”

The appraisers have made the following explanation of their award (Case, 26).

“In view of the fact that the statute has not been the subject of judicial construction and the questions raised are of considerable importance, we have concluded to indicate the basis of our determination.”

This basis of determination is thus defined in the report:

“1. It is the stock that is to be appraised. not the assets of the company.

2. The language of the statute is 'full market value.' We believe these words have a definite legal meaning. Market value is established as a result of sales; that value is agreed upon between a willing buyer and a willing seller.

3. The only sales of stock in question to which our attention has been drawn have taken place upon the New York Stock Exchange, where the stock was listed and regularly traded in over a period of years. No direct attack was made upon these reported sales, but it is contended on behalf of the petitioners generally that stock exchange sales do not reflect the true value of the stock for a number of reasons; and that the sales of this stock on the Exchange do not reflect its full value.

We fail to find in the record any competent proof to justify an inference that the sales of this stock on the New York Stock Exchange do not reflect the full and fair market value of the same and therefore we have in accordance with the direction of the statute and in the manner prescribed thereby fixed the full market value of such stock at the time of the consummation of the merger or consolidation in question at \$71.00 per share."

The question is thus presented whether preferred shareholders of a corporation dissolved by an act of merger and consolidation and superseded by a new corporation thereby created are entitled to the value of their shares in relation to the contract under which their stock was issued and in relation to the capital assets or whether the value of such stock is evidenced solely by the current prices therefor on the Stock Exchange. If the preference secured by the preferred shareholders' contract is

recognized as a valuable subsisting right they may possibly receive \$143.57, whereas, if the stock market prices alone are the measure of value, they will receive only \$71.

After argument on the Appraiser's Report Hon. Henry E. Ackerson, Jr., Judge of the Hudson Circuit Court, filed an opinion sustaining the report and an order of confirmation was entered accordingly.

An appeal to the Court of Errors and Appeals was dismissed upon the ground that an appeal did not lie to review a proceeding of this kind. Thereafter the order of the Circuit Court was affirmed on certiorari by the Supreme Court and from this affirmation the present appeal has been taken.

1.

There is an essential difference between the present case and that of the Morris Canal and Banking Company, 141 A. 784.

The Supreme Court put its determination solely on the Morris Canal decision although it says "the facts are somewhat dissimilar and the proceedings under a different statute." Case 349.

The law fails in justice when words are permitted to obscure real distinctions.

The proceedings differ in three essentials:

1. The Morris Canal & Banking Company was a going concern; the Central Leather Company, a corporation dissolved by consolidation.

2. The Morris Canal case was a condemnation; this has not even the character of a condemnation

but is rather a "conventional arrangement." 82 L. 391, 298.

3. The Morris Canal Condemnation was initiated from without by the State and did not touch the relation of stockholders *inter sese*; this proceeding grew out of a consolidation initiated from within by the majority stockholders for the express purpose of altering the contractual relations of stockholders *inter sese*.

In the Morris Canal case the State condemned the stock and it was held that in assessing the full market value of the stock and damages for the taking it was not a correct procedure to appraise the value of all the assets, divide this total by the number of shares and adopt the quotient as the value of one share. This decision agrees with the rule prevailing universally and its justice is not open to question.

The difference between the value of shares in a going concern and in a dissolved or consolidated company is radical. The value of shares in a going concern is determined by the prospects of the venture; it is a current, fluctuating value which changes with the earnings and prospects from day to day. The value of shares in a dissolved corporation, whether dissolved in the ordinary manner or by consolidation, is a fixed, unchangeable and ascertainable sum. It is a capital value, not a current market value; earnings, business and prospects have nothing to do with it; only the market value of the rights in the capital assets can properly be the value of the stock under such circumstances. As was said in the case of *Bijur*, 74 E. at page 557 (*supra*): "On dissolution the title evidenced by the certificate becomes merely an equitable right to a distributive share in the funds, and the stock-

holder can no longer convey any legal title to his stock by the mere assignment of the certificate." The title on dissolution by consolidation is analogous.

This difference between current stock values and dissolution values was recognized in the opinion of Justice Holmes in *National Bank of New Bedford*, 155 Mass. 317; 29 N. E. 532. There in taxing bank shares both market and asset value were determined. The court held market value to be the proper measure for taxation, saying:

"The difference in the value found * * * depends upon whether it is assumed that the corporation was to continue its business or was to be wound up. If it was to continue its business, \$102 was the fair market value for a share,—that is to say \$102 was the full amount of cash that could be got or ought to be got for a share in that bank, its property and prospects being what they were. The bank actually was to continue its business; therefore that was the actual cash value of its shares. What they would have been worth in a different state of facts, *if the bank had come to a stop*, does not matter. Actual values are based upon existing states of fact, not upon hypotheses; and the actual value of shares in a going concern depends, not only upon its property, but also upon its prospects, *since shares represent both property and prospects.*"

The Morris Canal stock was taken under eminent domain. In *N. J. &c. Ry. Co. v. Am. Elec. Wks.*, 82 L. 391, 396, the court said that a proceeding for appraisement in the Traction Act of 1893, similar to the appraisement under Sec. 108a did not

partake of the character of a proceeding for the condemnation of property (p. 396) but rather that it was "a conventional arrangement, somewhat analogous to that provided by our 'Act for regulating references and determining controversies by arbitration'" (p. 398).

In the Morris Canal case a stockholder could not have opposed condemnation on the ground that his rights in dissolution were not protected, because rights in dissolution could not possibly be an element of value in that case.

If the Morris Canal and Banking Company had been dissolved and the right of stockholders had been reduced to a right to an aliquot share in the proceeds after liquidation is it thinkable that the state could have condemned the shares at their sale value in the market before dissolution and in disregard of the value of the assets?

2.

Market value is to be appraised as of the date of consolidation and no valuable right inherent in the ownership of stock on that day can be constitutionally excluded from the appraisal.

(Reasons, Case, 344 to 347.)

The consolidation was consummated on June 23, 1927. The appraisers found the value to be \$71 on that day (Case 27) and it was admitted on both sides and held by the court that this was the correct time as of which the appraisal should be made (Case 366).

The value of a stock in a corporation that has passed out of existence must differ from

its value in a going concern; it has reached a condition of complete arrest; it will never again yield dividends to its owner or entitle him to share in the management of the business. Demonstrably its value in such a status must differ from its current market value in a live continuing business venture. Once the terms of consolidation are known, the current market value of the old stock must be governed by the estimated value of the securities for which it is exchangeable by the terms of consolidation and the law justly commands that the appraisement shall be made "without regard to any depreciation or appreciation thereof in consequence of the merger or consolidation." It is for this reason that appraisers are needed, because the current market can not gauge the worth of the old stock except in terms of the new.

The Trust Company Merger Act, Laws 1925, page 465, deals with the appraisement of the old stock in clearer terms. Instead of directing that "full market value" shall be ascertained it mentions merely "value" and the appraisers are directed to make "a written estimate of the value of such stock at the time of the appraisal." The word "estimate" is illuminating; it is a synonym for "appraise" but it is clearly indicative of something more than the mere inspection of reports of stock market prices, which was all that the appraisers, in effect, did in this case. The word "estimate" shows that elements of conjecture must enter into the finding and it is not conceivable that an estimate could completely exclude consideration of the value of assets.

These differences are verbal, not essential, and are not to be regarded as indicating a narrower standard of valuation under Section 108-a than

under the Trust Company Merger Act. They deal with rights which are identical in character and any discrimination in the protection of such rights would be unconscionable.

There being no question that the stock was to be valued as of a date when it no longer had a current stock market value, it was not due process of law to fix its valuation under a status which had ceased to exist and in view of prices which had nothing to do with its inherent value as stock in a dissolved company which was not to be exchanged for securities of the consolidated company.

3.

The history of the act demonstrates that the expression "full market value" is broad enough to include all values attaching to stock in a corporation as dissolved or terminated by consolidation.

Section 104 of the Corporation Act authorizes "any two or more corporations *organized or to be organized under any law or laws of this State* * * * carrying on any kind of business of the same or a similar nature" to merge or consolidate into a single corporation with the exception of railroad and certain other specified corporations.

Section 104 could not authorize a private corporation to consolidate unless empowered to do so at organization against the objection of even a single stockholder. *Kean v. Johnson*, 9 E. 401. As was said in *N. J. Ry. Co. v. Am. Elec. Wks.*, 82 L. 391, 396: "It is of course familiar and well-settled law that a majority of the stockholders of

a corporation cannot effect a consolidation with another corporation without unanimous consent, unless the right of consolidation has been conferred by legislation that may be read into the contract of incorporation" (citing *Colgate v. U. S. Leather Co.*, 73 E. 72).

But under *Black v. Del. & R. Canal Co.*, 24 E. 455, on the ground of public necessity, Section 104 could constitutionally authorize public utility corporations to consolidate whether empowered so to do at organization or not and whether stockholders objected or not, provided just compensation for the shares of dissentients was made. See also *Dickinson v. Traction Co.*, 114 Fed. 232, 252.

For public reasons it was important that public utilities should be free to consolidate against the objection of minority stockholders and to make consolidation of public utilities constitutional under Section 104, Section 108 was enacted in the revision of 1896 for the purpose of giving such compensation as had been declared necessary under *Black v. Del. & R. Canal Co.* Section 108 authorizes appraisement only in the case of corporations which "have the right to exercise any franchise for public use." Similar provision in the case of consolidation of street railway companies was made in 1893 C. S. page 5018, Sec 88; 5019, Sec. 93, the appraisement being authorized in the same words as in Section 108. A like statute for appraisement of stock of traction companies on consolidation was enacted in 1893. C. S. 5031, Sec. 113 (Sec. 17); C. S. 5033, Sec. 19 (Sec. 23), Section 17 ante being construed by Judge Gray in *Dickinson v. Traction Co.*, 114 Fed. 232, 252.

The procedure for appraisement in Section 108 was not extended to private corporations until 1902 (L. 1902, p. 700) and then only at the elec-

tion of the stockholder; the right to demand appraisalment was extended to the corporation by amendment in 1920 (L. 1920, p. 284) so that there is now no difference in the provision for appraisalment between Sections 108 and 108-a. The appraisements in both sections being authorized in the same words must mean the same thing and the meaning which the words bore in the earlier act must control their interpretation in the later act.

A consolidation to which a stockholder of a public utility corporation is compelled to submit against his will cannot be constitutional if consolidation was not authorized at the time the corporation was chartered unless full compensation for the value of rights on dissolution is given. Such a stockholder has not bound himself by an implied contract read into the charter to submit to surrender of his shares so that the appraisalment in such a case being made against his will must compensate him for all valuable rights that the law recognizes; otherwise, his contract is impaired and his property taken from him without due process of law, but it was argued and held below (Circuit Court Opinion, Case 330), that if the appraisalment under Section 108-a was permitted by law when the corporation was organized then the stockholder, by implication, agreed to an appraisalment at merely "full market value" and that this "full market value" did not contemplate the value of rights in dissolution. This is most arbitrary reasoning. There is no practical or legal excuse for supposing that stockholders by implied agreement deliberately bound themselves in case they objected to a merger to submit to the surrender of their shares for less than a sum which compensated them for all the valuable rights that they parted with. The stockholder in a private corporation is entitled

to insist that the appraisalment in his case under Section 108-a shall conform to the standard of appraisalment under Section 108 because both appraisalments have been authorized in the same words.

The reasoning below forces upon the stockholder by mere implication an agreement to submit to an unfavorable alternative, that is, he secures full rights by injunction and sacrifices part of his rights if he demands or submits to appraisalment. The value of the right to dissent is destroyed by such a construction. Whether the consolidation proposed is fair or not the stockholder has an absolute right to dissent. As was said by the court in *N. J. & C. Ry. Co. v. Am. Elec. Wks.*, 82 L. 391, 398, construing a like provision in the "Traction Act" of 1893, C. S. 5033, Sec. 119 (23): "Thus the act contemplates that a consolidation, however desirable in the estimation of a majority of the stockholders, may, in fact, be detrimental to the interests of individual stockholders, and compensation is provided for them accordingly." But compensation is not provided for them if they lose part of the rights in dissolution which would be protected in equity.

If all the dissenting stockholder obtains through appraisalment is the mere current market value of his stock, why should he go to the expense of the litigation which appraisalment entails instead of simply selling the stock in the open market? It was admitted on both sides below that appraisalment should be made as of the date when consolidation went into effect, so that the current market near that day would yield to the stockholder as much and probably more than such an appraisalment because his only expense would be a broker's commission instead of an attorney's fee.

An appraisalment made as of the date of the consolidation can not constitutionally disregard the value of the stock accruing on that date by reason of the status of the company on that date.

4.

The contract of the charter and stock certificate to pay cash equal to par and accrued dividends on dissolution was impaired by disregarding it in appraising the stock.

The Supreme Court did not touch on the question, ruling merely that the case was not to be distinguished from that of the Morris Canal & Banking Company, 141 A. 784.

Rights in dissolution evidenced by the stock certificate are valuable rights and are protected from impairment in equity on constitutional grounds. *Colgate v. U. S. Leather Co.*, 73 E. 72; *Copeland v. United Shoe Co.*, 84 E. 276; *Windhurst v. Central Leather Co.*, 138 A. 772, 774.

All rights arising from the contract of the charter are protected from impairment by action of stockholders *inter sese* on constitutional grounds. *Gen. Invest. Co. v. Amer. H. & L. Co.*, 98 E. 326; *Allen v. Francisco Sugar Co.*, 92 E. 431; *Pronik v. Spirits Dist. Co.*, 58 E. 97.

If an unfair consolidation is proposed a dissenting stockholder may enjoin it and thereby prevent appraisalment and purchase of his stock by the corporation. If the right to dissent means anything he must be entitled to have such an appraisalment pursuant to his dissent as will put him in the same situation pecuniarily as if he had dissented and

obtained injunction. *N. J. etc. Ry. Co. v. Am. Elec. Wks.*, 82 L. 391, 398.

The right to dissent is given absolutely whether a consolidation is fair or unfair and appraisement should not be judicially prescribed upon such terms as to put the dissentient at a disadvantage. It is argued that a dissenting stockholder can save himself from an inadequate appraisement of his stock rights by injunction or perhaps by suit for an accounting, based on the agreement to pay cash and accrued dividends, but can the enjoyment of the right of dissent be thus diminished? If the dissenting stockholder takes the peaceful course of asking that his stock be appraised, must he find himself penalized by having his rights appraised upon a basis which excludes rights that would be protected in equity?

Can the standard of appraisement be constitutional when admittedly a stockholder can prevent the appraisement by injunction on the ground that the terms of the merger are unconstitutional?

It would be a mistake in public policy to destroy the balance which the statute naturally establishes between the majority and the dissenting minority. Equality was the purpose of the law and the equality should be secured in its integrity.

It is not questioned that the appraisement in this case entails a sacrifice of the stockholder's right to preference on dissolution. It was said in the brief for the respondent upon the argument below:

"The alleged right to par and accrued dividends does not arise out of the preferred stock clauses, because there was no dissolution of the corporation; and if there were a dissolution by force of the consolidation, the time is not ripe for the enforcement of that claim on the part

of the preferred stockholders since they are entitled thereto, if at all, only when the properties of the company are liquidated and the proceeds are ready for distribution. Such claim is not an absolute claim arising upon dissolution or even upon sale of the properties, but merely a claim to be paid in preference to any distribution to common stockholders.

If there were such a claim enforceable by the preferred stockholders at the moment of dissolution, it is one not properly enforceable in the appraisal proceedings. By no stretch of argument can par and accrued dividends be said to be the full market value of the stock. If plaintiffs are entitled thereto upon any legal theory, it must be by virtue of some contractual relationship or some duty to account, the existence and enforceability of which can properly be adjudged, if at all, only in the court of chancery."

In *N. J. & H. R. Ry. Co. v. Am. Elec. Wks.*, 82 L. 391, the Court of Errors and Appeals, dealing with a similar provision for appraisement in the Traction Act of 1893, said (p. 397) :

"In the present case, we have an authorization for consolidation that is to be read into the contract of incorporation of each of the companies concerned, because it is contained in the act under which they were respectively organized. It thus was one of the terms under which the American Electric Works participated in the stock of the Hudson River Traction Company that that company might be consolidated with another, pursuant to Section 18 and the succeeding sections of the act, upon

making compensation to the stockholder in the manner pointed out by section 23, provided the stockholder dissented from the consolidation and refused to convert his stock. And, on the other hand, when the companies in question made their consolidation agreement, they made it—and no doubt consciously made it—subject to the duty imposed by section 23 to compensate any dissenting stockholder, either by paying him his damages or by taking his stock and paying him its market value, provided he should make application to the Circuit Court within the time and in the manner pointed out by section 23.

Thus the act contemplates that a consolidation, however desirable in the estimation of a majority of the stockholders, may, in fact, be detrimental to the interests of individual stockholders, and compensation is provided for them accordingly."

5.

The "merger and consolidation" effected a dissolution of both constituent companies and created a new corporation.

The agreement of "merger and consolidation" expressly declared as follows: "* * * said Central Leather Company and said The United States Leather Company shall be and the same hereby are merged and consolidated into a single corporation which shall be a new corporation under the laws of the State of New Jersey to be formed by means of such merger and consolidation; * * * The name

of said new corporation * * * shall be THE UNITED STATES LEATHER COMPANY" (Case, 249, 250).

This provision impressed upon the union of these corporations the true character of a "consolidation," not of a "merger" and thereby effected the dissolution of the consolidating companies, the surrender of their separate existence and the creation of a new and independent corporation in their stead.

The Corporation Act, Sec. 104, empowers corporations to "merge or consolidate into a single corporation which may be either one of said merging or consolidating corporations * * * or a new corporation * * * to be formed by means of such merger and consolidation."

The language throughout the statute dealing with this subject is in nearly every case "merger or consolidation" and it seems warrantable to conclude that it was the purpose of the law to discriminate between them. A merger contemplates the continued existence of one of the uniting corporations, whereas a consolidation implies that they have been dissolved and superseded by a new corporation.

In Fletcher on Corporations, Vol. 7, page 8304, Section 4662, it is said: "While the word 'merger' is often used as synonymous with 'consolidation' both in the decisions, textbooks, and also in agreements effecting a combination of corporations, a merger, rightly understood and according to its strict legal meaning, is clearly distinguishable from a consolidation such as is authorized by statutes in most of the states. A merger, using the word in its strict legal sense, exists only where one of the constituent companies remains in being, absorbing or merging into itself all the other constituent companies, while in the case of a consolida-

*Every v.b.
speaks of dis-
solution by
Consolidation
in the Colgate
case 73 E. top
of p 96*

tion a new corporation is created and generally all the consolidating companies surrender their separate existence." And further, Section 4661: "The consolidation of corporations means, generally, the combination of two or more corporations of the same or different states, by an agreement between them, under legislative authority, by which their rights, franchises, privileges and property are united, and become the rights, franchises, privileges and property of a single corporation, composed generally, although not necessarily, of the stockholders of the original corporations. The corporation resulting from the consolidation is called the consolidated corporation, and the original corporations are called the consolidating or constituent corporations. Ordinarily, the consolidating corporations are dissolved by the consolidation, and cease to exist, and an entirely new and distinct corporation is created as of the time of the consolidation, and, according to the later and better considered authorities, a consolidation is limited to combinations of two or more corporations creating a new corporation as distinguished from a merger by one company absorbing another without the creation of any new corporation." Citing *Chicago & E. I. R. R. Co. v. Doyle*, 256 Ill. 514; 100 N. E. 278; *Lee v. Atlantic Coast Line R. Co.*, 150 Fed. 785-787, and other cases.

"A consolidation, using the term in its strictly legal sense, always creates a new corporation, and this effect is usually produced by reason of express provisions to that effect in the consolidating statute. If a new corporation is not created thereby, then the combination is not, strictly speaking, a consolidation. This new corporation is an entity distinct from any of its constituents, although it takes over their assets and liabilities. For in-

stance, the corporate life is not the unexpired term of the constituent companies, but is the same as that of any other corporation." Fletcher on Corp. Vol. 7, Sec. 4700.

"The statutes may be so worded as to leave one or all of the constituent corporations in existence as corporations; or it may expressly or impliedly provide for the absorption of one company by the other, the former going out of existence and the latter remaining in existence, which constitutes a merger rather than a consolidation or it may expressly or impliedly create a new corporation as a combination of the constituent companies which are generally thereby dissolved either by express provision of the statute or by implication. Ordinarily, by the terms of the statute, or by implication therefrom, when corporations are consolidated under legislative authority, all of the consolidating corporations are dissolved and extinguished absolutely, so that they no longer exist for any purpose." Fletcher says further (Section 4703).

"Sometimes a statute authorizing consolidation, while it does not provide for continuance of the consolidating corporations for all purposes, or indefinitely, expressly provides for their continuance for certain purposes, as for the purpose of adjusting their liabilities, or transferring their property. Thus it is often expressly provided that the constituent companies shall continue in existence so far as necessary to protect the claims of creditors, but this does not continue the existence for all purposes, nor does it compel creditors to sue the constituent companies rather than the consolidated company where the latter is also made liable. So constituent corporations do not entirely die on consolidation so as to prevent them from maintaining or defending

actions pending at the time of the consolidation, where a statute provides that consolidation shall not abate or discontinue such actions" (Sec. 4706).

In *Diggs v. Fidelity & Deposit Co. of Md.*, 75 Atl. 517 (1910), it was decided that where two corporations consolidated under general laws providing that upon consolidation "all property belonging to the separate corporation, and all powers, rights, debts, and liabilities of the former shall be devolved upon the consolidated corporation," the corporate existence of the former companies terminated, and the consolidated company was a new and separate corporation acquiring its rights by grant from the state and not by way of transfer from the former corporations. The opinion quotes with approval the dictum of Beasley, C. J. in *N. J. Midland R'y Co. v. Strait*, 35 N. J. L. 322 that: "The consolidated companies cannot in the nature of things be the same as any one of their constituents."

In *Keokuk & W. R. Co. v. State of Missouri*, 152 U. S. 301; 38 L. Ed. 450, 454, Justice Brown said:

"It is difficult to see how the legislature could provide more clearly for the extinguishment of the prior companies, and the formation of a new one, than by providing that the two companies shall become one; that new certificates of stock shall be issued in exchange for the stock of the constituent companies; and that the consolidation agreement shall be recorded with the secretary of state as the charter of a new company. In our opinion this was the effect of the act in question."

"It is impossible to conceive of a corporation existing without stock, or certificates representing

the interest of the corporators in the organization. Now, if the act provides that these certificates shall be surrendered, and certificates in another company issued in their place, what becomes of the prior companies? Who are their stockholders—who their officers? If the stock in the new company is sold, what interest in the prior companies passes by the sale? There can be but one answer to these questions. The property and franchises of the prior companies are gone as much as if they had formally surrendered their charters. The new company may doubtless receive by transmission from its constituent companies their property, rights, privileges, and franchises, including any immunity from taxation; but it receives them as an heir receives the estate of his ancestor, or as a grantee receives the estate of his grantor, by inheritance, succession, or purchase. The result is not a mere union or partnership of two companies, nor the merger of the franchises of one in another, but the extinguishment of one and the creation of another in its place. Speaking of a similar act of Ohio, which declared that the consolidated companies 'shall be deemed and taken to be one corporation, possessing within the state all the rights, privileges, and franchises, and subject to all the restrictions, liabilities, and duties of such corporations of this state so consolidated, Mr. Justice Swayne observed in *Shields v. Ohio*, 95 U. S. 319, 323 (24 L. Ed. 357, 358): 'It (the consolidation) could not occur without their consent. The consolidated company had then no existence. It could have none while the original corporation subsisted. All—the old and the new—could not coexist. It was a condition precedent to the existence of the new

corporation that the old ones should first surrender their vitality and submit to a dissolution. This being done, eo instanti, the new corporation came into existence.' ”

In *Clearwater v. Meredith*, 68 U. S. 25; 17 L. Ed. 604, it was said (p. 608) :

“The effect of the consolidation ‘was a dissolution of the three corporations, and at the same instant, the creation of a new corporation, with property, liabilities and stockholders, derived from those passing out of existence.’ ”

In *Atlantic and Gulf R. R. Co. v. Georgia*, 98 U. S. 359; 25 L. Ed. 185, Justice Strong said (p. 187) :

“That, generally, the effect of consolidation, as distinguished from an union by merger of one company into another, is to work a dissolution of the companies consolidating, and to create a new corporation out of the elements of the former, is asserted in many cases, and it seems to be a necessary result.”

In the same case the court said further :

“But the act authorized the consolidation of the stocks of the two companies, thus making one capital in place of two. It contemplated, therefore, that the separate capital of each company should go out of existence as the capital of that company; and, if so, how could either have a continued separate being?”

The New Jersey statutes on merger and dissolution are in harmony with the adjudications above referred to.

Sec. 105 of the Corporation Act provides that the directors of the constituent companies “may enter into a joint agreement under the corporate

“seals of the respective corporations, for the merger
 “or consolidation of said corporations, and pre-
 “scribing the terms and conditions thereof, the
 “mode of carrying the same into effect, the name of
 “the *new corporation* (if one shall be so formed
 “or created), or of the consolidated corporation, as
 “the case may be.” * * *

Sec. 106 of the Corporation Act provides as follows:

“Upon making and perfecting the said agree-
 “ment and act of merger *or* consolidation, and filing
 “the same in the office of the secretary of state, the
 “several corporations shall be one corporation, by
 “the name provided in said agreement (in *case a*
 “*new corporation* shall be created thereby), or by
 “the name of the consolidated corporation into
 “which said other contracting corporation or cor-
 “porations shall be so merged or consolidated, as
 “the case may be, and possessing all the rights,
 “privileges, powers and franchises, as well of a
 “public as of a private nature, and being subject
 “to all the restrictions, disabilities and duties of
 “each of such corporations so merged *or* consoli-
 “dated, except as altered by the provisions of this
 “act.”

Sec. 107 of the Corporation Act provides that
 “Upon the consummation of said act of merger *or*
 “consolidation, all and singular, the rights, privi-
 “leges, powers and franchises of each of said cor-
 “porations, and all property, real, personal and
 “mixed, and all debts due on whatever account, as
 “well for stock subscriptions as all other things in
 “action or belonging to each of such corporations,
 “shall be vested in the consolidated corporation;
 “and all property, rights, privileges, powers and
 “franchises, and all and every other interest shall

“be thereafter as effectually the property of the consolidated corporation as they were of the several and respective *former* corporations, and the title to any real estate, whether by deed or otherwise, under the laws of this state, vested in either of such corporations, shall not revert or be in any way impaired by reason of this act provided, that all rights of creditors and all liens upon the property of either of said *former* corporations shall be preserved unimpaired, and the respective *former* corporations *may be deemed to continue in existence*, in order to preserve the same; and all debts, liabilities and duties of either of said *former* corporations shall thenceforth attach to said consolidated corporation, and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it.”

It results from these provisions of the statute that The United States Leather Company is “a new corporation”; that it is “formed or created” by the consolidation of the constituent companies; that title to all property and privileges of the constituent companies vested in the consolidated corporation and became “thereafter as effectually the property of the consolidated corporation as they were of the several and respective former corporations”; that the rights of creditors against the property of the “former corporations” is preserved; and lastly that “the respective former corporations may be deemed to continue in existence in order to preserve” such rights.

6.

An agreement of merger or consolidation can not destroy vested rights in the event of dissolution.

It was a vested right of preferred stockholders of the Central Leather Company to have their capital investment of \$100 per share plus accrued and unpaid dividends paid to them out of assets upon dissolution before distribution to other stockholders. Stock certificate Exhibit A-5 (Case, 211). Certificate of incorporation Exhibit R-16 (Case, 326).

At the date when the consolidated corporation came into being June 23, 1927 (Case, 25), the amount of the claim upon these rights was \$100 for the par value of the stock plus \$43.57 which was the amount of dividends accrued and unpaid at that date.

This claim was secured as between the stockholders by a charge upon the assets and could not be impaired as between the stockholders themselves by any change in the charter of the original company or by the adoption of a new charter through merger or consolidation. *Colgate v. U. S. Leather Co.*, 73 N. J. E. 72, 83, 89, 90, 96.

The powers of charter amendment conferred by law and thereby read into the contract of stockholders inter sese have never been held to justify the destruction of accrued rights. It would create an anomaly in the adjudicated law of this state to permit an impairment of contracts through merger or consolidation that would not be permitted if attempted by means of amendment of a charter.

These rights are basic and can not be affected by the mere phraseology of a statute. If the statute

in this case awards "market value" as compensation for stock of a dissenting shareholder, such market value must be ascertained in conformity to the constitutional right inhering in ownership of the stock.

A merger will be prohibited if its terms "are unfair and inequitable to the preferred stockholders in the event of liquidation or dissolution." *Copeland v. United Shoe Machinery Co.*, 84 N. J. E. 276, per Stevens, V. C. 1915. In that case the complaining stockholders held both preferred and common shares which by the charter of that company were entitled on dissolution to share alike in the distribution of assets. The merger agreement established a different ratio of distribution of assets in the new company on dissolution. The Vice Chancellor said: "It is obvious that whatever be the comparative market value of these respective rights, they are *different*. (The word "different" is printed in italics in the official report.) If the actual value of the stock, and of the property which the stock represents, should greatly exceed the par value of all the stock, preferred and common, then the stockholder would, as far as can now be seen, lose by the merger; if it should fall short of that par value, he would gain."

The inviolability of the right to accrued dividends was upheld by the Court of Errors in *General Invest. Co. v. American Hide & Leather Co.*, 98 N. J. E. 326 (1925). In that case preferred shareholders objected to the creation of new preferred stock which took precedence over preferred stock previously issued. The court sustained the right to issue such new shares under Sec. 27 of the Corporation Act conferring the right to create one or more classes of preferred stock but ex-

pressly held that no vested right to accrued dividends could be affected.

Gummere, C. J., said, with respect to the proposal to appropriate accrued dividends to the purchase of stock for retirement (p. 331) :

"If the purpose indicated is to be attributed to the corporation, the appellants are entitled to have it restrained from using so much of these accrued dividends as are applicable to the stock held by them, respectively, in the purchase contemplated by the plan which has been adopted by the shareholders."

Judge White in a concurring opinion made it clear that there could be no impairment of any right which had accrued to preferred shareholders. He said at page 337: "If there is such valid objection it must lie rather in the contract rights of the holders of the existing preferred stock, and in the fact, if it is a fact, that those rights would be successfully invaded by the rights given the prior preference stockholders; and that, after all, is the big question in this case."

After pointing out (p. 339) the fact that accrued dividends had never been declared Judge White continued (p. 340): "It seems to me, therefore, that as to the accrued unpaid dividends upon the preferred stock up to the present time, complainants cannot be deprived of their vested present property right to have those dividends paid to them at some future time out of earnings of the corporation before the payment of any dividends which did not have priority over them at the time they from time to time matured.

"But does this view invalidate the proposed action of this corporation to which complainants are now objecting? I am inclined to think that it does not. As to future accruing dividends, the dividends

of the prior preference stock about to be issued, will of course, have preference, but, as above stated, I think there is nothing illegal in that. As to dividends already accrued, however, my view is that the dividends on the new prior preference stock will not have preference over them, and that, therefore, the carrying out of the plan does not, in itself, overturn the vested rights to these back dividends of the complainants. Those vested rights will not be invaded until, as it seems to me, there shall be an attempt to pay dividends either to these prior preference stockholders or to the common stockholders before the present matured and unpaid dividends on the preferred stock of complainants shall have been paid. When that occurs, if it ever does occur, I shall be inclined to think that, as in *Day v. United States Pipe Co.*, 95 N. J. Eq. 389; 96 N. J. Eq. 736, such action could be enjoined."

In this *American Hide & Leather* case the equities involved arose between old shareholders and proposed new shareholders who were paying a new consideration for their stock and who were contributing new capital to the company. In the present case the question lies between existing stockholders without the presence of any such element as arises from a new consideration. The question here is one of the equities of stockholders inter sese upon rights that have been established and which it is now proposed to change radically in such a way as to abolish the preferences of one class of stockholders in favor of another class without a new consideration.

In *Colgate v. U. S. Leather Co.*, 73 N. J. E. 72, another consolidation was enjoined by Emery, V. C., because no provision was made for compensation to preferred shareholders for their claim to cumulative dividends in arrear payable out of net

earnings. It was held that the consolidation did not affect the right to unpaid dividends. Syllabus 8.

The Vice Chancellor rested his decision on the provision of the statute that "All debts, liabilities and duties of either of said former corporations shall thenceforth attach to said new or consolidated corporation, and may be enforced against it, to the same extent as if said debts, liabilities and duties had been incurred by it" (p. 90 of the Opinion).

He said: "But this right to consolidate terminating, as it does, the right to future dividends after consolidation, does not necessarily affect the right to dividends existing at the time of consolidation, and it is in reference to the accumulated unpaid dividends that the question fairly arises as to whether, on the termination of the business of the company by the consolidation, the right to an account for the payment of them is not a liability or a duty of the existing company, which would exist against the United States Company on the termination of its existence, and which therefore continues against the new company."

After expressing the opinion that it was doubtful whether preferred stockholders had a right to the present payment of the unpaid dividends by reason of the fact that such payment had not yet been authorized, he added (p. 95): "But this clause in the certificate was, in my judgment, intended to apply to and regulate only the declaration and payment of dividends by the company, as a going concern, and is not to be held to affect or control the right of the preferred stockholder, on the termination of the business of the company by dissolution otherwise than by liquidation, to the earnings of the company which had been accumulated and invested for the continuance of its business,

and which, while being accumulated and invested, were subject to this express charge in his favor."

The preferences of preferred shares on liquidation in *Colgate v. U. S. Leather Co.* case were thus defined: "In case of liquidation, the preferred stock shall be paid in full at its par, together with all *earned* and unpaid dividends, before any payment is made on the common stock" (top of p. 91 of the Opinion). The preference of preferred shares in the present case is broader in liquidation or dissolution as above pointed out, because preferred shareholders here are entitled to receive "cash to the amount of the par value of such preferred stock together with all accrued and unpaid dividends,"—that is, the preference is not limited to earned dividends as in the earlier *Central Leather* case.

It follows that the reasoning of Vice-Chancellor Emery, insofar as it related to earned dividends, is applicable here to accrued dividends, whether earned or not, if there be assets sufficient to pay them. This was the determination in the *American Hide & Leather* case (*supra*) where the dividends had not been earned and were in arrear to the amount of 140%, of which only about 40% was covered by the surplus.

If full market value of preferred stock does not mean value in dissolution then, as was pointed out by Emery, V. C., in this same opinion, the majority of shareholders will be enabled to "divide the assets more or less between themselves to the exclusion of the minority" (bottom of p. 87 and top of p. 88 of the Opinion).

That the terms of the present merger were inequitable and that the merger would have been enjoined if a timely application had been made was indicated by Bentley, V. C., in dismissing the bill for injunction against the present merger and consolidation in the case of *Windhurst v. Central*

Leather Co., 138 Atl. 772. At page 774 of the Opinion the Vice Chancellor said:

"The case sub judice does not present that precise question, but it does involve the right to adopt a policy over the objection of any of the preferred stockholders whereby the holders of the common stock may be permitted to share in the earnings of the company without a literal enforcement of the rights of such preferred stockholders, as those rights were fixed at the time of the creation of the company. Any vigilant, bona fide holder of a single share of such preferred stock, who is not in default himself, ought to secure the aid of this court to prevent any such interference with his contract rights. *Chicago City Ry. v. Allerton*, 18 Wall. 233, 21 L. Ed. 902. Vice-Chancellor Emery's Opinion in *Colgate v. U. S. Leather Co.*, 73 N. J. Eq. 72, 67 A. 657, strongly supports this view, and the pertinent part thereof was not criticized by the Court of Errors and Appeals, in reversing on other grounds, in 75 N. J. Eq. 229. But in that case the complainants were vigilant and filed their bill before the meeting of stockholders had even been convened, while here the circumstances presently to be stated make it seem that this is a case where equity should refuse to interpose, and that position should be based squarely upon the situation that the complainant have permitted to arise without having previously invoked the aid of this court to prevent it, accentuated and exaggerated by the circumstances under which the complainant, Windhurst, made his entrance into the matter." The reversal above mentioned of the decision of Emery, V. C., was not of the decision above quoted from but of a modification thereof, and went upon the ground that the merger of the two companies was illegal because they were not chartered to do business of the same kind. See 75 N. J. E., pp. 232-233.

7.

The assets should have been appraised.

The problem of the appraisers was to find the full market value of a share of Central Leather stock on the day of consolidation when the company passed out of existence and its stock was divested of its ordinary legal attributes and passed into the state of an equitable claim to share in the capital. Those who had accepted the terms of consolidation were to be compensated for their share of the capital by payment in securities of the new company; those who dissented were to be compensated in money. The law must intend that there shall be no unfair consequences of such a settlement.

The appraisers made no appraisal of assets (Case 26), but they had complete evidence before them of the value of the assets in the reports of the Central Leather Company to its stockholders (Case 183-190; Stern's testimony 42). The valuations in these reports were most conservative (Case 42 to 48). No evidence to impeach this appraisal of its assets was offered by the Company. It would seem inconsistent and improper for it to do so. If such evidence had been offered the appraisers might have concluded that the assets, at market value, were worth less than book value, but it seems a wrong upon dissenting stockholders to permit the majority stockholders to adjust their compensation for their share of capital on the announced valuation of its assets by the Corporation and then to attack this valuation as a false basis for the corresponding adjustment of compensation to the dissentients.

See Colgate 'USL Co
73 & bottom of p. 98.

An appraisal or valuation for the purpose of consolidation was necessarily made by the corporations themselves (Brown's testimony, Case, 117). The balance sheet of the Central Leather Company disclosed the value of its assets already stated (Case, 183-190; 42 to 48). The new stock was issued on the basis of value and the entire stock issue of the new consolidation was necessarily related to the value of the total assets. The new company filed an elaborate listing statement with the New York Stock Exchange for the purpose of satisfying the public of the value of assets (Ex. A-4, Case, 197). If, in order to accomplish what it deems an advantageous consolidation, it sends broadcast a valuation of its assets as an invitation to public confidence in its securities, a dissatisfied stockholder should have the benefit of the valuation thus relied on by the company itself.

It may be asked how the appraisement should deal with the capital assets if the stock before consolidation were selling at a premium not reflected in the book value of the capital assets. The answer is that such a premium is the result of good will which is a proper asset to be appraised and accounted for whether the corporation carries it on its books or not.

The value of the assets as declared by the Central Leather Company is \$166.90, per share of preferred stock. The corporation contends that book value of its assets is not market value, but it is not denied that the assets of the Central Leather Company transferred by the consolidation were valued by both the old and the new companies at a sum exceeding \$143.57 for each share of preferred stock of the Central Leather Company, and it is for the appraisers to find out what these assets are really worth in relation to the stock of the appellant's under the status of dissolution.

8.

The statute as construed has deprived appellants of compensation for capital assets valued by the company at more than \$250,000.

Confusion has arisen from ignoring the difference between the value of a share in a going enterprise and the value of a share of capital in an enterprise which has been terminated and the consequence has been that the capital assets are being unjustly divided. The charter preferences are live, continuing rights unimpaired by the remoteness or contingency of their enjoyment for dissolution in contemplation of law is neither near nor remote.

In the relations here under consideration the law of corporations follows by analogy the law of partnership. *Kean v. Johnson*, 9 E. 401. Putting aside the question whether consolidation is dissolution in the sense of the stock certificate, it remains that the corporate life of the Central Leather Company has ended and its capital as an entirety has been turned over to a new corporation embarking upon a new and distinct enterprise.

If a partnership were undergoing a similar transformation, there would necessarily have to be a full accounting with respect to all rights in the capital assets. No partner could acquire any part of the capital in which the others had special rights to the detriment of the latter and the rights agreed upon in the articles of partnership would be worked out by an equitable division of the capital.

At consolidation the Central Leather Company had net assets, over and above all liabilities, valued on its books at a sum which was equal to \$166.80

for every share of preferred stock (Case 42, 282, 283). The par value of the preferred was \$100 and the accrued dividends unpaid at consolidation amounted to \$43.57. By the contract between the stockholders these capital assets, equal to \$166.80 for every share of preferred stock, were pledged to the payment of \$143.57 to the holder of each share of preferred stock on dissolution. The stock was appraised at its going concern value of only \$71, so that, assuming book value to be true value, dissolution entitled each preferred shareholder to \$72.57 per share more than the \$71 awarded by the appraisers. On 3,500 shares this difference exceeded the sum of \$250,000 represented by capital assets.

The company's book valuation was unusually conservative (Case 48); it had resulted from a drastic writing off of capital values during several years preceding consolidation (Case 45 to 49). Nearly ten million of the capital assets was in call loans which were equivalent to cash (Case 42). It is true that the market value of these assets might have been less than \$166.80 per share of preferred, and it is also true that it might have been more, but for the purposes of argument let it be assumed that the assets consisted of gold coin sufficient to pay \$143.57 for each preferred share.

Upon this ideal assumption (which is justified because the assets were not appraised and it can not be said that they were not worth this sum) can an appraisement be defended which awarded to the appellants for each share only \$71 and thereby deprived them of their rights in capital to the extent of \$72.57 per share?

The stockholders who were compensated for their interest in the capital of the dissolved corporation by payment in new securities instead of money certainly had no title to this \$250,000 of capital pledged

to the dissenting appellants and there is no equitable explanation which can justify the handing over to them of this property.

9.

The Public Policy Involved.

Since the words "full market value without regard to any depreciation or appreciation in consequence of the merger or consolidation" have a demonstrable meaning as used in Section 108, is there any practical consideration which should lead to another construction of these words as used in Section 108a?

The evolution of corporation law and the canons of construction indicate that these words should be construed in favor of the stockholder who dissents and not of the corporation. At common law and in the earlier periods of statutory change the right of a stockholder to prevent any deviation from the purposes of the corporate enterprise was, on constitutional grounds, and upon analogy to the law of a partnership, strictly maintained not only in New Jersey but universally. *Kean v. Johnson*, 9 N. J. E. 401; *Zabriskie v. Hackensack &c. R'y. Co.*, 18 N. J. E. 178; *Black v. Del. &c. Canal Co.*, 24 N. J. E. 455; *Pronick v. Spirits &c. Co.*, 58 N. J. E. 97; *Colgate v. U. S. Leather Co.*, 73 N. J. E. 72; *Copeland v. United Shoe Machinery Co.*, 82 N. J. E. 276; *Allen v. Francisco Sugar Co.*, 92 N. J. E. 434; *General Invest. Co. v. Amer. Hide & Leather Co.*, 98 N. J. E. 326.

These cases all show how strictly the courts of New Jersey have construed against the majority stockholders all statutes in derogation of common

law right or of antecedent contractual right, and that strictness has suffered no diminution.

In the brief for the United States Leather Company submitted to the Circuit Court occurred the following expressions: "It is true the plan involved surrender of a nominal or paper right to receive accumulated dividends at some remote period in the future" and also "value of a share does not consist of the right in the remote contingency of the winding up of the business to receive a proportion of the net proceeds of liquidation." Likewise the Circuit Court said:

"Hence the 'liquidation or dissolution or winding up (whether voluntary or involuntary) of the corporation' referred to in the certificates of preferred stock or the certificate of incorporation, does not include the status arising from a merger or consolidation, and it was never intended that the 'full market value' specified in Section 108a of the General Corporation Act, should mean the par value of stock with all accrued and unpaid dividends thereon, as otherwise the specification that dissenting stockholders should receive 'full market value' would have been entirely unnecessary, and it is never to be presumed that the legislature expressly gave a distinct standard of valuation for no purpose whatsoever" (Case, 332).

Such reasoning could not apply to an appraisal under Section 108, and can lead only to a loss of public confidence in the security of preferred stock issued by New Jersey Corporations if it is permitted to control the construction of Section 108a.

The present consolidation is not a true consolidation but a device to re-adjust the relations of stockholders among themselves. The transaction was only a colorable consolidation. The old United States Leather Company was a bankrupt subsidiary of which the Central Leather Company owned every share. Its deficit exceeded \$11,000,000 and it necessarily contributed no capital to the new consolidated corporation (Brown's testimony, Case, 119, 300, bottom of page). Consolidation with such a subsidiary was no more than a sale of assets in disguise which, if it had been attempted openly, could have been prevented under *Kean v. Johnson*, 9 N. J. E. 401.

The Central Leather Company might as well have organized a new subsidiary with nominal capital and assets and used it as a receptacle to receive all the assets of the Central Leather Company under a new arrangement of the capital structure, destroying (as here) the guaranteed preferences of objecting stockholders.

The capital of the Central Leather Company was necessarily the only capital involved in the consolidation of the new company; and the rights of preferred stockholders in this capital thus taken out of their control are greatly impaired. It can not be a wise or politic thing to permit a company which, as a mere subsidiary, has already been to all intents completely merged with the parent company, to be used in this manner solely for the purpose of changing the relative rights of the stockholders amongst themselves.

10.

As to Decisions in Other States.

It is surprising to find that there have been few decisions involving statutes of this kind in other states. Since they necessarily construe specific statutes these decisions have only such value as may be found in the statement of principles but it is worth while to notice some of them because there does not seem to be in any of them any support for the contention of the respondent.

“A minority stockholder, if he votes against the action taken by the corporation, is entitled under the statute to ‘payment for his stock.’ If the corporation and the stockholder cannot agree, the value is to be ascertained by disinterested arbitrators. It is obvious that ‘the value of the stock’ means not merely the market price if the stock is traded in by the public, but the intrinsic value, to determine which all the assets and liabilities must be ascertained. The stockholder as well as the arbitrators, if arbitrators are appointed, ordinarily must resort to the books of the corporation for information, although a condition may exist where the books of themselves would fail to exhibit the true financial condition of corporate affairs.”

“The statutory option given to a dissatisfied stockholder is either to acquiesce or to accept the fair value of his stock and retire from the corporation. If he retires, the valuation on which payment is to be made is * * * to be ascertained as if liquidation had been voted

and all the corporate property after the payment of debts had been marshalled for the benefit of stockholders."

Cole v. Wells (Mass.), 113 N. E. 189.

"But, even if the appellees might have pursued the remedy provided by the fifth section of the Act of 1901, they were not bound to do so. No new right is conferred upon stockholders by the Act of 1901, and no one theretofore enjoyed by them has been impaired by it. It authorizes consolidation, but does not take away the right of a stockholder to refuse to surrender his stock for that in a new corporation or to take anything less for it than its actual value, if his company is to be practically dissolved. This is all the decree secures to the appellees, and to it they were entitled."

Lauman v. Lebanon Valley R. R. Co., 30 Pa. 42. 72 Ann. Dec. 685;

Barnett v. Phila. Market Co., 67 Atl. 912 Pa.

In re Interborough Cons. Corp., 277 Fed. 455, Mayer, J., quoted with approval a case in the New York Supreme Court in which Hotchkiss, J., spoke as follows:

"The statutes which provide for the consolidation of corporations have to that extent deprived minority stockholders of certain common-law rights; that is, it deprives them in a sense, for they are made subordinate to the right of the prescribed majority to carry the corporation and its assets over into the amalgamated corporations. But a minority stockholder has his rights protected under the stat-

ute. He does not need to go into the consolidation if he protests. By all the statutes I have ever had occasion to examine, it is provided that if a stockholder objects a commission shall be appointed to determine the value of his distributive share of the assets."

Wormser, Referee, in the unreported case of *Paul P. Schauble & Co. v. Commonwealth Finance Corp.* (U. S. D. C., S. D. of N. Y.) filed May 21, 1924, said:

" 'A share of the capital stock,' 'of a corporation is, briefly stated, the interest or right which the owner thereof has in the management of the corporate entity, in its surplus profits, and, upon dissolution, in all of its corporate assets remaining after the payment of its debts (*Van Allen v. Assessors*, 3 Wall. U. S. 573, 583; *In re Putnam*, 193 Fed. 464; 14 C. J. 384, and cases cited). The share simply represents, in other words, the stockholder's proportional interest in the concern, in the capital and its net earnings (*Gibbons v. Mahon*, 136 U. S. 549).' 'Each share represents an aliquot part of the capital stock' (*Farlington v. Tennessee*, 95 U. S. 679). A share of stock represents the title of the shareholder to his equitable proportion of the corporate property (*Donnell v. Wyckoff*, 49 N. J. L. 48, 52; 7 Atl. 672; see, also, *Continental Securities Co. v. Interborough Rapid Transit Co.*, 165 Fed. 945; *Stokes v. Continental Trust Co.*, 186 N. Y. 285).

"A stockholder may sell his share of stock if he wishes to, and if there is a market. The market value may be more or less than its ac

tual intrinsic value, but if the stockholder retains his stock, being unwilling to dispose of it or to have it disposed of for him, the stockholder continues to receive the benefit of its actual value and the actual property and assets which the share stock represents, regardless of its market value. When, in other words, the share stock is deprived of valuation, the stockholder is *a fortiori* deprived of the benefit of the derivative use of the actual assets and property which the stock represents, the earnings of such property and assets, and consequently his *pro rata* aliquot share thereof, and, in the final analysis, the stockholder is thus being deprived of the actual intrinsic value of his stock. No refinement of argument can blind one's eyes to the fact that this is what the stockholder loses, and that, therefore, this is his actual damage. The purpose of this, as of every other legal remedy, should be restitution and fair compensation in so far as it is practicable to arrive thereat. On principle, therefore, and logically, the conclusion follows that the indemnity to the shareholder should be the equivalent of his loss, that is, the *pro rata* intrinsic value of the corporate moneys, properties and interest, represented by the particular shareholder's stock. The true test properly should be this, and no other."

In *Winfree v. Riverside Cotton Mill*, 113 Va. 717, at page 724, it was said:

"While, under the provisions of section 1105e of the Code, the Riverside Cotton Mills had the right to consolidate with the Dan

River & Manufacturing Company by a majority vote, any stockholder of either corporation who did not give his assent to such consolidation and was dissatisfied therewith, had the right to refuse to become a stockholder in the consolidated corporation and was entitled to receive from such consolidated corporation the fair cash value of his stock as of the day before the vote for consolidation was cast, and a summary proceeding was provided for ascertaining the value of such stock, and to secure its payment to the dissenting stockholder. Subsection 41.

While this summary remedy is given by the statute, and the appellant might have pursued it, he was not bound to do so. Although the consolidating statute took away from him the right to defeat consolidation by refusing to assent to it, it did not take away from him the right to refuse to surrender his stock for stock in the new corporation, or to refuse to take anything for it less than its actual value at the date of the consolidation. *Barnett v. Phila. Market Co.*, 218 Pa. St. 649; 67 Atl. 912; *Colgate v. U. S. Leather Co.*, 67 Atl. 657; 5 *Thompson on Corporations*, sec. 6060.

To ascertain that value, under the allegations of the bill, investigations into the condition of the Riverside Cotton Mill may have to be made, and accounts taken, which could be done better in a court of equity than in a court of law."

Twenty states have enacted statutes, relating to dissenting stockholders' rights on sales and consolidations. In these various statutes are used the

terms "value" "market value" "full market value" "fair value" and "fair cash value."

Nine states use the term "value."

Arkansas (L. 1925, Act 155, Sec. 4) ;
 Connecticut (G. S. 3524) ;
 Delaware (G. C. L. 61) ;
 Maine (R. S. Chap. 51, Sec. 63) ;
 Massachusetts (G. L. 156, Sec. 46) ;
 New York (S. C. L. 21-87) ;
 North Carolina (L. 1925, Chap. 77) ;
 South Carolina (L. 1925, Act 169, Sec. 3) ;
 Vermont (L. 1919, No. 125, Sec. 2).

Two states use "fair value."

Illinois (G. C. A. Sec. 73, as amended by
 L. 1921, p. 370) ;
 Maryland (Code, Sec. 35).

One uses "full and fair value."

Rhode Island (Sec. 56).

Florida, Nevada and Virginia term it the "fair cash value."

Florida (L. 1925, Sec. 38) ;
 Nevada (G. C. L., Sec. 41) ;
 Virginia (Code, 3822).

Kentucky (Carroll's Kentucky, Sec. 558) provides for "market value."

Four states including New Jersey use the term "full market value."

New Jersey (Sec. 108-a) ;
 Alabama (Code, Sec. 7042) ;
 New Mexico (Code, 1915, Sec. 99) ;
 Pennsylvania (L. 1909, Sec. 5).

The Alabama statute provides that dissenting stockholders shall be paid "the actual value" of their shares, and that the court shall appoint three appraisers, to appraise "the full market value." The use of both terms shows that they are deemed equivalent.

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It is respectfully submitted that the stock of the appellants was not appraised as required by law and that the award of the appraisers ^{should} be set aside.

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— o —

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[48667]

New Jersey Court of Errors and Appeals

HORACE G. PRALL, *et als.*,
Prosecutors-Appellants,

vs.

THE UNITED STATES LEATHER
COMPANY,
Defendant-Respondent.

*On Appeal
from
Supreme
Court.*

BRIEF FOR RESPONDENT THE UNITED STATES LEATHER COMPANY.

This case is on appeal from an order of the Supreme Court affirming, on certiorari, an order dated May 4, 1928, made by Circuit Judge Ackerson, confirming the award of appraisers (Messrs. Walter P. Gardner, John Milton and Peter Eckes) theretofore appointed by him to appraise the preferred stock of Central Leather Company of certain stockholders dissenting from the consolidation of Central Leather Company and The United States Leather Company (No. 2), New Jersey corporations. The Consolidation Agreement was filed and became effective on June 23, 1927.

The award was made in a statutory proceeding by these Appellants to force the Company to buy their stock. In no sense was it a condemnation of their shares.

There were several petitions filed in the Hudson County Circuit Court under Section 108-a of the General Corporation Act (Revision of 1896); Comp. Stat. 1662; amended, (Cum. Supp. 683). The petitioners in the proceedings other than that instituted by the Appellants, sub-

sequently dropped out prior to the actual submission of the case to the appraisers.

The appraisers heard testimony and received and considered extended written briefs.

The appraisers fixed the "full market value" of the petitioners' preferred stock in Central Leather Company at \$71 per share and filed a brief written statement of their conclusions. (Case, page 23). This figure was based on actual sales, in volume, on the New York Stock Exchange.

Defendant moved to confirm the award. Judge Ackerson heard argument and reviewed the testimony and briefs filed with the appraisers, as well as supplemental memoranda, before filing the memorandum of his conclusions. (Case, page 327)

During the pendency of these appraisal proceedings there has also been pending in the Court of Chancery of New Jersey a case in equity involving the contractual rights of stockholders in the Company. About a month after the consolidation took effect, a bill was filed by a preferred stockholder to enjoin the execution of the Consolidation Agreement. A preliminary injunction was denied by Vice-Chancellor Bentley in *Windhurst vs. Central Leather Company*, 5 A. R. 1316 (138 Atl. 772), in the course of which he said as to the Plan of Readjustment:—

"Without entering into any extended discussion, it does not appear that the plan under which the new company was formed is inequitable." * * *

And again:

"The advantages and privileges accorded the holders of the prior preference stock seem to at least offset the disadvantage."

Later the bill in that case was amended so as to turn it, in effect, into a suit for the specific performance of the preferred stock clauses of the Central Leather Company. There has been a final hearing before the Vice-Chancellor but his opinion thereon has not yet been rendered.

The Scope of the Review of the Award of the Appraisers.

The statute commits the appraisal of the stock to the appraisers appointed by the court. It is not intended that the court should substitute its own judgment of valuation for that of the appraisers. In this case, as there is, of course, evidence to support the award by the appraisers, the only ground open to the appellants is that the appraisers proceeded upon an erroneous interpretation of the law.

The question of the extent and scope of the review of the award is not determined by guiding precedents under the present statute relating to Eminent Domain. For, under that statute, confirmation of the award by the court is not required. If either party is dissatisfied with the award, the remedy is by an appeal resulting in a trial anew before a jury.

There are, however, useful precedents under earlier decisions.

New Jersey Railroad and Transportation Co. v. Suydam, 17 N. J. Law 25, was a review by certiorari of an assessment of damages for the construction of a road.

At page 33, Chief Justice Hornblower for the Supreme Court, said

“When the principle of valuation or rule of action upon which the commissioners acted, is ascertained, this court is judicially to de-

termine not whether the assessment made upon those principles, was too much or too little; but whether the principle or rule of action itself, was a lawful or unlawful one."

State, Swanton, Pros., against Pierson, 37 N. J. L. 363.

Review by certiorari of proceedings to lay out public road.

At page 367, it was said,

"Such an assessment will not be disturbed by this court, merely on the ground of its inadequacy as a compensation to the landowner; but, whenever it plainly appears that such inadequacy resulted from the surveyors having adopted and acted upon a wrong principle in making up their judgment, their whole proceedings will be set aside."

The courts follow like principles in reviewing the action of municipal authorities in cases where municipal authorities act within their authority.

Reviewing the proceedings of the Board of Public Utility Commissioners, for instance, the court does not set aside a finding of the Board where there is any evidence to support it.

Interstate Telephone, etc., Company v. Public Utility Board, 84 N. J. L. 184.

The Morris Canal & Banking Co. Case.

The issue in this case must be determined adversely to the appellants on the authority of *In the matter of Condemnation of the Capital Stock of The Morris Canal & Banking Company*, 6 A. R. 987. The Supreme Court so held in a brief opinion.

The contentions of the stockholders in this case are the same in essence as the contentions urged

by the stockholders in the *Morris Canal & Banking Company* case and rejected unanimously by the commissioners (Messrs. Charles V. D. Joline, Frank C. Ferguson and Percy A. Gaddis), by Justice Trenchard in the Supreme Court, and by the Court of Errors and Appeals. This notwithstanding that it was a condemnation whereby the stock held by the stockholders was taken from them against their will, and notwithstanding that the stock was far less actively dealt in in the market than in this case; and notwithstanding that there was express testimony as to the actual value of the assets of the Canal & Banking Company in that case.

The opinion of the Court of Errors and Appeals delivered by Chief Justice Gummere reads:

"The State, pursuant to authority conferred by chapter 112 of the statutes of 1923, entitled 'An act concerning and regulating the acquisition and taking of shares of the capital stock of the Morris Canal and Banking Company by the State of New Jersey, or any agent thereof, providing a procedure and manner of making compensation therefor' (P. L., p. 210), sought to acquire by condemnation certain shares of the capital stock of the Morris Canal and Banking Company held by various stockholders. The proceedings to be followed in such acquisition are set out in detail in the statute. The State, not being able to acquire the desired stock by purchase, proceeded to exercise the power of condemnation conferred by the statute, following strictly the steps therein indicated. This was done by applying to Mr. Justice Trenchard, of the Supreme Court, to hear and determine the interests of the several stockholders and the amount of damages to be paid by the State for the acquisition of their stock. Acting under section 7 of the statute, and in accordance with the provisions thereof, the Justice, instead of himself hear-

ing the matter in the first instance, appointed three commissioners to appraise 'the full market value of the stock sought to be acquired by the State, and what damages, if any, should be assessed for the taking of the same.' The duty of the commissioners thus appointed was to hear such evidence as was submitted on the part of the State and of the owners of the stock, and then to fix such sum as, in their judgment, would represent the fair market value of the stock sought to be condemned, and report the same to the Justice. The commissioners, after hearing testimony, fixed what they considered the present fair value of the stock, and reported their finding to the Justice; and, after a consideration of the matter, he affirmed the award of the commissioners, and filed his determination in the office of the Clerk of the Supreme Court; and, under the statute, it thereafter had the same force and effect as a judgment entered in the Supreme Court, subject to a review by this court 'upon any question of law involved in the proceedings.' The present appeals are from the determination of Mr. Justice Trenchard.

"The case shows that the report of the commissioners was based upon the market value of the stock at the time of the making of their report, and it was upon this fact that Mr. Justice Trenchard rested his determination. The ground of appeal is that it was an error of law to hold that the market value of the stock was the true criterion of the damages resulting to the stockholders from the taking by the State; that what the commissioners should have done was to have ascertained the total value of all the various properties owned by the Canal Company, including water rights, which it could not use except for canal purposes, and all other interests vested in it, and, having done this, then to divide the amount thus ascertained by the number of shares of stock of the Canal Company, the quotient thus obtained

being, as the appellants contend, the fair value of each share.

“It seems to us that this method of ascertaining the fair value of corporate stock suggested by the appellants is unsound; and that Mr. Justice Trenchard was right in his conclusion that the duty of the commissioners, under the statute was to ascertain and report the market value of the stock, and not the more or less speculative value of the properties and rights upon which it is asserted such market value rested. According to the theory of the appellants, if one of them had desired to sell his stock and had employed a broker to dispose of it at its fair value, the duty of the latter as such employe would have been to disregard the market value of the stock as shown by other sales of such stock made between willing sellers and willing buyers; to cause an investigation to be made for the purpose of ascertaining the full amount of the corporate assets, and the value of each item thereof; and the existing number of shares of corporate stock; and then divide the total value thus ascertained by the number of shares outstanding; and having done this, to offer his customer's stock for sale at the price determined by this method of computation. It can hardly be supposed that, if the broker had been instructed that, by agreeing with the appellant to act for him in attempting to sell his stock at the fair value, he assumed the obligation which we have indicated, he would have accepted the offered employment; or that any other broker would have done so under the same conditions. Common sense and business methods almost universally prevailing in the sale of corporate stock are alike condemnatory of the existence of any such obligation, and we are not able to perceive any difference between the obligation of a broker employed to sell stock at its fair value and the duty imposed by the statute upon the Justice and the commissioners in the present case.

"For the reason indicated, the order under review will be affirmed."

Other cases to the same effect relied upon by us are, for convenience, cited and digested in an Appendix hereto, p. 44, *et seq.*

The Appraisers Correctly Determined the "Full Market Value" of the Preferred Stock.

The United States Leather Company (No. 1) was organized under the laws of New Jersey in 1893, and then acquired a considerable number of tanneries variously located, but devoted chiefly to the tanning of sole leather. The company also acquired large holdings of bark lands. Bark was at that time and still is to a lesser extent one of the principal sources of tannin, the principal re-agent in the tanning process. The company beside operating its tanneries and selling its timber disposes of various by-products, such as glue.

The capitalization of the original company was large.

The original company tanned perhaps 60% of the sole and heavy leather (used for harness, belting, etc.) in this country at the time of its organization (Case, p. 91). The proportion of the company's output to the total output in this country has since declined. President Brown estimated the company's present output at 30% of the American output (Case, p. 91).

The industry is highly competitive. The tanner purchases his principal raw material, the raw hide, in a competitive international market. He has no control over the volume of hides coming into the market or over the price of the hide.

The process of tanning is slow, so that the turn over is slow. Because of this large working capital is needed. The spread of time between the purchase of the hide and the sale of the finished product, results in the carrying of heavy inventories, and subjects the tanner to the risk of extreme fluctuation in the market price of the goods carried in the inventory. (Case, pp. 93, 95)

Formerly the tanneries were for the most part located near the available sources of bark, that is, in remote districts. The ownership of large areas of timber lands, together with the tanneries, represents a heavy investment in fixed capital. (Case, p. 96)

The enterprise appears to have derived but slight benefit from the combination of many plants under single control. This Company has gradually scrapped many of its tanneries, for the most part at a heavy loss, but still carries on operations through about twenty-five different plants. (Case, p. 96)

The United States Leather Company (No. 1) paid dividends on its preferred stock in irregular amounts, and fell into arrears. This led to the formation of the Central Leather Company in 1905, pursuant to a plan for reorganization with a view to the readjustment of the arrearages. Central Leather Company, through the deposit of stock under that plan, became the owner of most of the preferred and common stock of the old United States Leather Company, and also, about the time of its organization, acquired some additional plants, and was for a time both a holding and operating company. A proposal to merge the old company into Central Leather Company resulted in litigation, which

was not terminated until 1909, when the merger was carried through. Immediately thereafter another company, United States Leather Company (No. 2), was organized, no doubt to perpetuate the name in the business. It had a small authorized capital stock, of which Central Leather Company was the owner. It has, however, actively marketed the products of Central Leather Company and subsidiaries and had substantial assets. Central Leather Company actually operated through various subsidiaries, making, however, hide purchases in its name, financing the subsidiaries, etc. The testimony as to the operations and as to the balance sheet of Central Leather Company has treated same on a consolidated basis (on which basis the company has always reported to its stockholders), and all figures referred to herein are on that basis.

In connection with the earlier reorganization, certain bonds were issued which matured in the spring of 1925, and were refunded early in that year. Under the earlier reorganization the amount of preferred stock issued was \$33,299,050 (332,990.5 shares of the par value of \$100) and the amount of common stock was \$39,701,030 (397,010.3 shares of par value of \$100). The Preferred Stock was a 7% cumulative preferred stock, preferred as to assets as well as to dividends. Both preferred and common stock had voting power, as to which it will be noted that the common stock exceeded in amount the preferred stock.

Central Leather Company paid dividends on its preferred stock regularly until April 1921. The company enjoyed extraordinary prosperity during the War. Dividends on the common stock were paid in varying amounts for the

only time in the history of the enterprise in the years 1913 to 1920 inclusive. The result of the War was the accumulation of enormous inventories, and under changed conditions there was excess tanning capacity. In 1920 the situation created a "buyers' market", resulting in terrific operating losses in 1920 and 1921, due to idleness of plants and shrinkage in inventory. There was a slight recovery in 1922 and another heavy loss in 1923. 1924 also showed a loss, and 1925 and 1926 but small profits. In 1925, following continued idleness or part time operation of many plants, it was decided to abandon a large number of plants, and this was done. The machinery was salvaged as far as possible. The land sold for small figures, largely because of its remote location. There were no buyers for tanneries as such. The principal purpose of this step was, of course, to concentrate production and reduce maintenance expense and repairs. The company wrote off the abandoned plants. The total write-off was approximately \$10,300,000., of which approximately \$7,400,000. was written off against surplus, and \$2,900,000. against Special Depreciation Reserve. (Case, p. 93 *et seq.* Ex. R3, Case, p. 306)

The losses of 1920, 1921 and 1923 (without giving effect to the adjustment of surplus in 1925) wiped out the surplus and resulted in a large operating deficit. This, of course, made it impossible to pay preferred dividends. Arrearages of preferred dividends accumulated, and on June 30, 1926, amounted to 36¾%, on June 23, 1927, to 42%.

One of the permanent effects of the War was the stimulation of the industry in Europe, which had theretofore been a large importer of Ameri-

can tanned leather, and this company has suffered a permanent and substantial loss of export business. (Case, p. 92)

In the summer of 1926, the burden of evolving a plan for the readjustment of the capitalization of the company to meet the changed conditions and to make possible the resumption of payments to preferred stockholders was undertaken by a committee representing preferred stockholders and a committee representing common stockholders, with the assistance of the bankers for the company, Kuhn, Loeb & Co. and Bankers Trust Company. (Ex. A9, Case, p. 212)

A plan was formulated, dated October 1, 1926, and was announced at or about that date. Under the plan a large proportion of both the preferred and common stock was deposited. Up to September 28, 1927, 95% of the Preferred and 89% of the Common had been deposited (Case, p. 88).

The plan was declared operative in February, 1927. On June 23, 1927, Central Leather Company and United States Leather Company (No. 2) consolidated to form a new corporation, United States Leather Company (No. 3) (the respondent). That consolidation was carried through in strict compliance with the statute. Both companies were engaged in similar business, both were active, going companies with substantial assets. (The large debt of United States Leather Co. No. 2 was an intercompany debt.) Neither one was created as a mere instrument for the purpose of effecting a change in capitalization.

Appellants dissented from the consolidation and asked for an appraisal of their stock and payment of the amount fixed by the appraisers.

The problem before the appraisers was therefore to determine the

“full market value of his (their) stock without regard to any depreciation or appreciation thereof in consequence of the said merger or consolidation.”

Corporation Act, Section 108a, Cum. Supp. of 1924, page 683.

There appears to be no question but that the appraisal is to be made as of the date when the consolidation becomes effective, in this case June 23, 1927.

The appraisal is of the full market value of shares of stock, not of the property of the corporation. It is to fix the *market* value of the stock and not the speculative value thereof, or some so-called intrinsic value based on a theory or guess. The stock is to be appraised without regard to appreciation or depreciation by reason of the consolidation.

The value of a share of stock depends largely on the earning power of the company, the extent to which it distributes its profits in money to its stockholders, and its prospects for the future.

“Book value”, so-called, is really not value at all. It is simply a mathematical figure. Experience and common sense both tell us that stocks sell with very slight relation to book value. It profits a stockholder nothing if his corporation has paid a high price for assets which do not earn a dividend. On the other hand good management, good business and other factors many times makes stocks worth much more than book value. Book value is not adopted as a basis for buying and selling stocks and is therefore not a proper basis for determining the “market value” of a stock. It is not, unless under most

exceptional circumstances, taken by the courts or other tribunals dealing with the problem of valuation as the basis for the valuation of stock.

The adoption of market price as a measure of value might in some case be unjust to the stockholder, but in many cases the use of book values or values derived from appraisal of assets would produce a figure far less than the market value and therefore be unjust to stockholders.

The appellants urge that the appraisers should have made an appraisal of the assets of the company. Would it have been possible for the appraisers to have made a physical appraisal of the twenty-five or more tanneries scattered throughout the country, as well as the timber lands, saw mills, railroads, glue factories, and other fixed plant and equipment of the company and its subsidiaries?

The statute makes no provision for taking testimony or for meeting the cost of making such an appraisal.

In fact, the appellants offered no direct evidence as to the value of the physical assets and the appraisers did not, as we read the record, decline to make an appraisal of the assets.

Appellants, however, rely upon the valuation of the company's properties as set up on its books, which leads merely to a repetition of the argument that because the book values were in excess of par and accrued dividends on the preferred stock, the properties, if liquidated, would have realized more than enough to pay par and such arrearages in full.

While it is true that the book values had been adjusted several years ago, President Brown was careful to say that the adjusted figures were in-

tended as book values of a going concern, that is, that the figures were proper if the company realized sufficient earnings from the use of its plants (Case, p. 109). The figures were not intended to reflect what the properties could be sold for in case of a cessation of business.

Economists, financial writers and the courts are all agreed that value in its ordinary and primary sense means market value, that is, what can be obtained in exchange, measured in the terms of money, the medium of exchange. See cases cited in Appendix.

The courts have often said that where the term "value" is used without any qualification it means market value.

In re McGhee's Estate, 105 Ia. 9, 74 N. W. 695.

The Constitution of New Jersey requires property to be assessed at its "true value." The General Tax law provides that the assessor of real estate shall "determine the full and fair value of each parcel of real property situated in the taxing district at such price as, in his judgment, such parcel would sell for at a fair and bona fide sale by private contract on the first day of October * * *." P. L. 1927, p. 577.

If selling value be not true value then the Tax Act is unconstitutional.

Market value is always taken as the basis for the assessment of damages in actions at law involving a sale of goods and chattels, the conversion of shares of stock, and other similar questions, and generally in the assessment of inheritance and other taxes.

Market value is taken as the basis for condemnation proceedings even where, as in most cases,

the statute does not specifically refer to market value.

“What is the market value of a commodity? The answer is: What it will bring in the market. What is the best evidence of its market value? The answer must be: What it actually sells for.” *Staker v. Reese*, 97 S. E. 641, 646 (W. Va., 1918).

“Market value does not refer to value to the owner or to the purchaser, but to value in the market.” *Pittsburgh etc. R. R. Co. v. Gage*, 121 N. E. 582.

Where there is no actual market, as ordinarily in the case of condemnation proceedings, since every tract of land with the improvements thereon differs from any other, and since the owner is resisting the taking of his land, still the courts and commissions seek to solve the problem on the basis of market value by evolving an answer to the question—what would a willing buyer under no compulsion to buy pay for this property in purchasing from a willing seller not compelled to sell. 20 Corpus Juris 727. This also is the common problem in the taxation of real estate.

As Mr. Justice Black, for the Court of Errors and Appeals, in *United New Jersey Railroad and Canal Co. v. State Board of Taxes etc.*, 100 N. J. Law 131, said with reference to railroad property:

“It is also clear that there have been no other lands of like acreage or use in the locality sold in the open market from time to time, to which the market value of these lands can be compared. The criterion established of market value is a hypothetical sale; hence the would-be buyers are hypothetical buyers, not actual and existing purchasers.”

So, in the case of *Turnley v. City of Elizabeth*, 76 N. J. Law 42 (Supreme Court 1908) it was

held that neither the original cost of construction nor the estimated cost of reproduction of a residence was the criterion of valuation under the general tax law, but that the tax should be assessed on the basis of selling value even if there were no actual market for the property.

And, in *In re Princeton University*, 37 N. J. L. J. 178, the State Board of Taxes held that the Graduate College of Princeton University, during its construction, must be assessed on the basis of market value; and, although there was some evidence that over \$400,000. had been expended on the building, an assessment of \$350,000. was reduced to \$25,000.

The Preferred Stock of Central Leather Company was just as marketable a commodity as cotton or wheat. The stock of the Company and its predecessor had been listed on the Exchange for over thirty years, was outstanding in very large volume and undoubtedly was widely held; the affairs of the Company were well known to investors and the Readjustment Plan had been, of course, fully studied by investors.

The market was not a "close" market because of the deposit of a large percentage of the stock under the Readjustment Plan. For every share so deposited, there was issued a certificate of deposit which was listed on the market and had an active market, and there was not a great disparity in price between the stock and the certificates. An examination of Exhibit R-1 (Case, p. 301) shows that the price of the stock advanced during the period of deposit.

Notwithstanding the deposits under the Plan, there remained outstanding a substantial amount of preferred stock, about 10% when the Consolidation Agreement was consummated, i. e.,

about 30,000 shares of stock undeposited. The stock itself continued to have an active market up to June, 1927. The volume of sales is also shown by Exhibit R-1 (Case, p. 301).

We see no reason why the deposit of stock should depress the price of the undeposited stock. The latter would naturally tend to have a marginal or scarcity value.

The general market conditions were certainly favorable. For three or four years, almost without interruption, there had been in course a general upward movement of security prices in a "bull" market of unprecedented length of time and of unprecedented activity. Credit and money conditions were "easy." Business conditions were good. There were no factors tending to depress the market.

There was an actual, active, a free market in the stock in June, 1927. It was a favorable market. If the market price did not at the time register full market value, we cannot conceive of any market price registering accurately full market value.

Did the market price reflect an appreciation or a depreciation, however, of the value of the stock because of the consolidation? We submit that it clearly reflected appreciation.

This appears from the movement of the prices for the stock, especially as compared with the progress of the Readjustment Plan.

The natural market tendency of a stock is to advance when, having paid no dividends for years, there begin to develop possibilities of distribution.

The price of the stock advanced in the early part of 1927—about the time the Plan was de-

clared operative, notwithstanding the poor earnings of the Company for 1926, and before the market price could reflect the benefits of the improvement in earnings for the first quarter of 1927.

The Plan itself was inherently advantageous. No other conclusion can be drawn from the overwhelming approval of the Plan by holders of an enormous amount of stock in the Company.

It is true the Plan involved the surrender of a nominal or paper right to receive accumulated dividends, at some remote period in the future when, if and as the Company could (1) earn enough to wipe out the deficit; (2) earn enough to accumulate some surplus; (3) earn enough to resume current dividends on the Preferred Stock (although the Company had not earned the full dividend requirement any year since the war, and had fallen short thereof in several years before the war); and (4) could earn enough to pay something on account of arrearages. What was that right worth in the face of a great reduction in the volume of business of the Company, increased competition and changes in the industry?

By the Plan the Preferred Stockholders surrendered an abstraction and got a reality in the form of immediate cash payments of \$8.50, a half share of a Prior Preference Stock which could be expected to pay dividends and also three-fourths of a share of Class A. stock which has a dividend priority over the Common Stock and an additional participating right and which is convertible into Common Stock, so that, in case of substantial improvement in earnings, the Class A. stock would share therein.

It is suggested that the preferred stockholder under the plan received a lesser interest in the assets than in case of dissolution. That would all depend upon the amount distributed in case of a dissolution. The right of a stockholder upon dissolution is of minor importance and surely affects but little the market value.

In *Windhurst v. Central Leather Company*, *supra*, Vice-Chancellor Bentley said upon motion for preliminary injunction:

"So far as the dissolution rights of the old preferred stockholders are concerned, there is not the slightest prospect of that contingency ever materializing, and there is the further uncertainty as to the value of any of the shares if it does. * * *."

In an unreported case, *Brugler v. United Shoe Machinery Company*, Vice-Chancellor Lane, in an oral opinion, rendered June 4, 1917, said:

"The question is what is the market value, what is the real value of the holdings of the complainants, and what is the real value of the thing offered in return. * * * Obviously to say that preferred stock of the Company is now worth \$56 is absurd. The mere fact that, if the Company should be dissolved today and if its assets could be realized upon and make their book value, then the stock would be equal in value to \$56 is far from saying that it is really worth at this time \$56." * * *

We therefore submit that the market price for the preferred stock in June, 1927, about \$70 per share, was the full market value of the stock.

That this figure reflected appreciation rather than depreciation by reason of the consolidation, appears upon examining the course of the price movements in the stock, bearing in mind the earnings and other factors affecting the movement of prices. It seems to us that the best evi-

dence of the market value of the stock without reference to such appreciation is to be found in the prices prevailing in the early spring of 1926. At that time, the stock no doubt reflected to some degree the more favorable earnings of the year 1925, but did not reflect to any marked degree expectations raised by the imminence of a readjustment.

A study of the movement of the prices for the stocks shows the following as the low and high prices for the preferred and common stock during the years 1919 to 1925, inclusive, and during the months beginning January, 1926, to and including June, 1927.

<i>Year</i>	COMMON		PREFERRED	
	<i>Low</i>	<i>High</i>	<i>Low</i>	<i>High</i>
1919	56½	116½	104½	114
1920	30½	104¾	80¼	108½
1921	22⅛	43¼	56⅛	96
1922	29⅜	44⅛	63⅜	82¾
1923	9⅝	40½	28⅛	79¾
1924	9⅞	21⅝	29¼	58¼
1925	14¾	23⅝	49¼	71
<i>Month</i>				
1926				
Jan.	18⅛	20½	62½	68¾
Feb.	17½	20¼	60¾	67⅞
Mch.	11⅛	17⅝	47⅛	63¾
Apr.	8¼	13⅜	43¼	50⅞
May	7⅛	10⅜	44⅝	53⅜
June	9⅛	11	49⅝	59¾
July	8	9¾	51	58
Aug.	7¾	9⅛	53	55⅝
Sept.	8½	11⅜	55¾	60½
Oct.	7⅜	9¼	50⅞	60¼
Nov.	7	8½	49¾	53¾
Dec.	7¼	8½	51½	54⅝

1927				
Jan.	8 $\frac{3}{8}$	10 $\frac{3}{4}$	54	58 $\frac{1}{4}$
Feb.	9	10 $\frac{3}{4}$	57	66 $\frac{1}{2}$
Mch.	8 $\frac{7}{8}$	10 $\frac{1}{2}$	61	71
Apr.	9 $\frac{5}{8}$	10 $\frac{3}{4}$	68 $\frac{1}{2}$	72
May	9 $\frac{7}{8}$	17 $\frac{7}{8}$	70 $\frac{1}{2}$	76 $\frac{1}{2}$
June	14	16	72	77 $\frac{1}{2}$

See Exhibits A-6 and R-1. (Case, p. 301)

The prices of the Preferred Stock bear no relation to book value, and no apparent relation to the steady increase of dividend arrearages. Evidently both stocks were sensitive to the current earnings of the Company. Prices were on the upturn during the latter part of 1925, when earnings were at a more favorable rate. They fell off after March, 1926, due, no doubt, in large part to the slump in the stock market at that time.

There is nothing in the movement of the Common Stock during and for months after October, 1926 (when the Readjustment Plan was promulgated) to show that the investing public thought that the Plan sacrificed the Preferred Stock for the benefit of the Common Stock. When the Plan was declared operative in February, 1927, the Preferred Stock moved up sharply, while the Common Stock remained practically stationary for several months.

Intrinsic Value.

The evidence of actual market sales is conclusive. See especially

Douglas v. Merceles, Appendix, p. 46;

Gregg v. Northern R. R. Co., id., p. 50.

We submit, further, that the prices prevailing in the spring of 1926 are as high as a hypothetical buyer would pay for the stock and that

hypothetical sellers would sell stock at those figures, and as high as the "intrinsic value."

By all ordinary and reasonable tests of security valuation, about \$60. a share was as much as this stock would have commanded without reference to a Plan of Readjustment which would permit the resumption of dividend payments. We have already mentioned some of the unfavorable factors affecting the industry of this company.

We wish to refer more particularly at this point to the effect of these factors on the business and earnings of this Company.

First,—as to volume of business.

Compare the Years.	Leather in sides (even thousands)	Lumber in feet (even thousands)	Volume of business in dollars (even thousands)
1910	10,054	203,127	\$55,640
1911	9,794	180,010	52,991
1912	11,013	188,528	66,854
1913	8,884	173,466	59,586
with			
1923	5,707	128,163	52,826
1924	5,314	122,285	41,483
1925	4,109	153,238	41,122
1926	4,304	146,752	37,904
1927	2,109	68,586	18,569
(to June 22)			

Further details appear on Exhibit R-5 (Case, p. 308). The shrinkage in volume is material and apparently permanent. The volume of business in dollars is materially less than in the pre-war period, without regard to the diminished purchasing power of the dollar.

As to the earnings. The following show the earnings or net income of the Company available per share of Preferred Stock after all expenses, taxes and interest. We begin with 1906, the

first full year after the organization of Central Leather Company, and we subdivide the period in question into four periods—the pre-war years, 1906 to 1913, inclusive,—the war years of 1914 to 1919, inclusive (in 1919, the economic forces resulting from the war had not yet spent themselves)—the period of post-war readjustment, 1920 to 1923, inclusive—and the period of prosperity and business expansion, beginning in 1924.

The earnings available for dividends per share of Preferred Stock are as follows:

1906		\$14.60
1907		9.85
1908		10.66
1909		14.77
1910		4.49
1911		.89
1912		17.23
1913		13.18
Average for the foregoing period...		\$10.71
1914		14.65
1915		19.90
1916		46.52
1917		43.26
1918		19.45
1919		42.91
Average for the foregoing period...		\$31.12
1920	Loss	67.35
1921	Loss	33.24
1922		4.59
1923	Loss	21.84
Average for the foregoing period		Loss \$29.46

1924	Loss	1.45
1925		4.40
1926		1.61
1927		6.69

(Income for period ending June 22,
placed upon an annual basis.)
Average for foregoing period.....\$2.81
Grand average for 22 years....\$7.535
(From Ex. R3, Case, p. 306)

Those figures do not reflect the write-down in 1925 of \$7,397,891 (net after first writing off the Special Depreciation Reserve created out of earnings) which, if charged to earnings, would decrease the above figures.

Earning power is certainly the primary factor in influencing the transactions between buyers and sellers which fix the market value of stock.

Whatever basis might be used in capitalizing the earnings, the result would be less than \$71 per share.

There was no evidence for a valuation higher than the actual market other than the opinion expressed by Mr. Stern. He was an accountant, and it is doubtful whether his opinion evidence as to market values of stocks was qualified and admissible. As the appellants do not now appear to rely on that evidence as a basis for disturbing the award, we do not stop to discuss the apparent flaws in his testimony.

No amount of theorizing could change the color of the red ink in the balance sheet and profit and loss statement.

The opinion of one witness will not prevail against that of the investors whose actual recorded transactions on the Exchange established the actual and the full market value of the stock.

If, as appears to be the case, the prices prevailing in the late spring of 1927 reflect both a scarcity value for the Preferred Stock at that time, and an appreciation by reason of the consolidation, the Appraisers certainly did no injustice to the Appellants in adopting the then prevailing price in the market.

The Appellants inquire why the statute should give them the right to have an *appraisal* at *market* value when they can obtain the same amount by selling stock in the market. Several answers may be suggested. The stockholder is given thirty days in which to decide whether to accept the new securities under the merger (the value of which is tested by the market during that period) or to sell his old securities on an advancing market, or in case the market declines to seek an appraisal on the basis of the higher market at the date of the merger. The stockholder in a close corporation gets the full benefit of the hypothetical market price, though there be no actual market. The statute protects the stockholder against a temporarily or artificially depressed market. It is, therefore, not irrational to construe the statute to mean what it says—that the basis of appraisal is value in the market, if there be an open, free, normal market. Market or exchange value is accepted by all, in theory and in practice, as the soundest basis of valuation, because it is based on realities, not on guess-work, because it is certain and ascertainable, not uncertain and speculative. See cases cited in Appendix.

If it is “perfunctory”, as the Appellants say, to appraise in accordance with the market price on the Exchange, how much more so to appraise their stock at par and accrued dividends if book value be in excess of that amount.

The Consolidation was not a dissolution of Central Leather Company within the meaning of Article IV of the certificate of incorporation.

The provision of the charter relating to the dissolution of Central Leather Company must, of course, be read in the light of the statutes in force at the time of its organization. At that time the Corporation Act embodied, as it does now, title V relating to "Winding Up" and title XI relating to "Merger of Corporations." The titles contain independent and adequate provisions for two quite different purposes having equally different results. This difference is now so well recognized by the courts of this state that it will suffice to refer only in the briefest manner to the provisions of the two titles.

By the terms of section 54 the directors of a corporation are created trustees of a corporation upon its "dissolution" and are empowered to settle its affairs, collect the debts, sell the property and divide the moneys and other property among the stockholders after payment of debts. In whatever wise "dissolved", corporations are continued as bodies corporate for the purpose of suit, disposition of property and division of capital, "but not for the purpose of continuing the business for which they were established" (section 53).

By the terms of section 106, it was provided that merging or consolidating corporations should "be one corporation * * * possessing all the rights, privileges, powers and franchises" of the constituent companies. By those of section 107, "the rights, privileges, powers and franchises" of each of the constituent companies "and all property, real, personal and mixed, and all debts due on whatever account" became vested in the consolidated corporation.

“Dissolution” is nowhere mentioned in the merger title, nor “merger” nor “consolidation” in the title relating to dissolution.

In dissolution, the power to continue business is lost; in consolidation, it passes, *ipso facto*, to and continues in the new or absorbing company. If a consolidation worked a dissolution, it would be impossible for the consolidated company to continue the business because that power would then have been lost by the consolidation. (See *Friendship Telephone Co. v. Newark Telephone Co.*, 88 N. J. Eq. 562, 565).

If a consolidation amounts to a dissolution as to one stockholder, why not as to all? If one stockholder is entitled to withdraw his share of the assets, why not all? And then what becomes of the consolidated company?

In *Riker & Son Co. v. United Drug Co.*, 79 N. J. Eq. 580, the Court of Errors and Appeals drew a very clear distinction between dissolution, on the one hand, and merger or consolidation, on the other. Mr. Chief Justice Gummere said:

“Manifestly, the prime purpose of the scheme outlined in this communication is not the winding up of the New Jersey corporation and the distribution of its assets, or the proceeds of the sale thereof, among its stockholders, but the absorption of that company by the Massachusetts corporation, the transfer not only of its assets but of its business, to that corporation, and the future carrying on of that business by the Massachusetts corporation under the name of the defendant company. *The scheme, in its essence, whatever it may be in form, is not a plan for the reorganization of the New Jersey company, nor even for the winding up of its business and its dissolution within the meaning of the latter word as used by our Corporation act, but is a scheme for its*

merger into or consolidation with the Massachusetts corporation. State vs. Atlantic City and Shore Railroad Co., 77 N. J. Law (48 Vr.) 466, 483."

In the *Brugler* case, *supra*, the complainants objected that upon the merger they would receive stock having a right upon dissolution limited to \$35, as against a then book value of assets equal to \$56 a share. Vice-Chancellor Lane did not regard the merger as tantamount to a dissolution. He said:

"The mere fact that, if the company should be dissolved today and if its assets could be realized upon and make their book value, then the stock would be equal in value to \$56 is far from saying that it is really worth at this time \$56. The complainants, the minority stockholders, have no right to insist upon a dissolution. A dissolution may never occur."

In *Windhurst v. Central Leather Co., supra*, it was said:

"So far as the dissolution rights of the old preferred stockholders are concerned, there is not the slightest prospect of that contingency ever materializing, and there is the further uncertainty as to the value of any of the shares if it does, as Vice Chancellor Lane explained in the unreported case of *Brugler v. United Shoe Machinery Co.*" (5 A. R. 1316, 138 Atl. 772.)

In *Copeland v. United Shoe Machinery Co.*, 84 N. J. Eq. 276, certain stockholders applied to restrain a proposed merger of the same two companies involved in the *Brugler* case, *supra*. A preliminary injunction was granted to restrain the merger on the ground, *inter alia*, that it might appear at the hearing that the terms of the merger were unfair to the preferred stockholders in the event of liquidation or dissolution.

In *Beling v. American Tobacco Co.*, 72 N. J. Eq. 32, 42, Vice-Chancellor Pitney remarked that, strictly speaking, merger proceedings do not amount to a legal winding up, although he conceived that the only difference to the complainant was that he did not receive the share of the proceeds of the winding up which he would have got under formal proceedings under the statute.

As to the *Beling* case, it must be remembered that the American Tobacco Company was incorporated before the first merger statute of general application (1893). Hence the complaining stockholder had never given his consent to a merger. As to him, it was not *de jure*, and was legally destructive of the business enterprise in which he was a stockholder. *That* consolidation might readily have been viewed as a dissolution as to such non-consenting stockholder.

Of course, in the *Beling* case, the company had a surplus and was prosperous. None of the peculiar facts of this case were present.

We submit that upon consolidation there is no dissolution of the constituent companies. What becomes of the old company? Its existence continues as a constituent of the new. When a chemical element combines with another to form a new compound, it is not *dissolved*. *Dissolution* connotes a falling apart, a *distribution*, the opposite of a *consolidation*. *Reorganization* is the opposite of *disorganization*.

For Income Tax purposes, a consolidation is regarded as a *reorganization*, as opposed to a dissolution. The holder of stock is not regarded even as having parted with or realized upon his stockholdings.

The fees payable to the State of New Jersey upon consolidation are not those payable upon a

dissolution; and the fees are not imposed with reference to the total authorized capital stock of the consolidating corporation, but only on the excess thereof over the capital of the merging corporations. Corp. Act., Sec. 114; Cum. Supp. 685.

The mere dissolution of a corporation in many instances is regarded as a breach of its executory contracts; thereby it disenables itself from continued ability to perform. But we know of no cases holding that a mere consolidation has this effect.

But the question here is not whether there is a notional extinguishment of the old corporation. What complainants must rely upon is the preferred stock clauses of Central Leather Company (disregarding for the moment the effect which we contend should be given to the statutory power to merge and to convert their stock). Those clauses provide for preferential payment in case of

“a liquidation or dissolution or winding up”

Noscitur a sociis. The language means *actual* dissolution with its normal result, sale and distribution. This has not taken place.

Further, no payment need be made to preferred stockholders except as a condition of payment to common stockholders. No distribution of any kind has been made or is contemplated on the common stock.

The case of *Mayfield v. Alton Railway etc. Co.*, 100 Ill. App. 614, 625, affirmed 198 Ill. 528, 65 N. E. 100 (cited with approval by Judge Mayer, in the *Interboro Consolidated case*, *post*), involved a merger. Plaintiff protested against the merger and argued that upon “the winding up” of the Corporation the stockholder has a right to have the assets converted into money for the

purpose of distribution and that a merger is a "winding up" of the constituent corporation. A demurrer to the declaration was sustained, the lower court saying:

"The winding up stage of the constituent corporations within the meaning of these words, as applied to the time for distribution of the corporate assets, is not accelerated by the consolidation and therefore the mere fact of the consolidation will not give the stockholder the right to have the corporate assets converted into money; nor is such consolidation a winding up of the constituent corporations within the proper meaning of these words as applicable to the state of case set up in appellant's declaration."

The appellate court stated the question to be:

"Does the lawful consolidation * * * give a dissenting stockholder * * * a lawful right to demand of the new or consolidated company payment in cash for his shares of stock?"

and answered the question in the negative.

Cases cited for the appellants under Point 5 are readily distinguishable. The cases of *Atlantic and Gulf R. R. Company v. Georgia*, and *Keokuk & Western R. R. Company v. State of Missouri*, are cases involving the right of the consolidated corporation to succeed to the constituent company's right to exemption from taxation.

It will be seen at once that there is a wide distinction between cases involving the sovereign right to tax a corporation, or to regulate a public utility, and the rights of a non-assenting stockholder upon consolidation of his company with one or more other companies. As stated in the *Keokuk* case, the "taxing power of the state should never be presumed to be relinquished

unless the intention to do so be declared in clear and unambiguous terms."

In other words, every inference is to be drawn in favor of the power of the sovereign government to tax, or to regulate public utilities. The essential question in these cases was whether there was an identity of existence between the consolidated corporation and the legal entity to which the tax exemption was granted. It was enough for the purposes of these decisions to consider that there was a notional as distinguished from an actual dissolution of the prior corporations.

Clearwater v. Meredith involved the question of the destruction of a contract between third parties and a stockholder in one of the companies which later entered into the consolidation. Insofar as this case holds, or appears to hold, that the old company was dissolved by the consolidation, it is no authority in the present case, for the reason that the stockholder in question had not dissented but had consented to the consolidation and, quite naturally, the court held that "by his own act he has destroyed the stock," i. e., the very stock to which his contract related.

Diggs v. Fidelity & Deposit Co., was a case involving issues entirely foreign to this case—namely, the rights and powers of a consolidated corporation under a mortgage made by one of its constituent companies.

The case of *Cole v. Wells*, 224 Mass. 504; 113 N. E. 189, did not arise under the appraisal statute. It was a suit in equity to set aside a fraudulent sale. Defendants argued that as complainant had made a demand for an appraisal, he could not maintain a suit in equity. That was

the occasion for the discussion of the effect of the demand for appraisal under the statute.

The court says, continuing the second quotation on page 41-42 of the Brief for the Appellants:

“It is plain that the defendants, through their control of the corporation, cannot compel plaintiff, who is ignorant of their misdoings, to accept payment for his stock upon a valuation of the assets which excludes the amounts misappropriated.”

This, we think, is quite distinct from holding that the book-value is the same thing as the value of the stock. Note also that the statute refers to value and not to market value.

The case of *In re Interborough Consolidated Corporation*, 277 Fed. 455, was one in which a stockholder was asserting a claim against the corporation, and not an appraisal proceeding. The quotation in the brief is from a quotation by Judge Mayer from Mr. Justice Hotchkiss of the New York Supreme Court. The latter was speaking about the failure of a stockholder to have his stock appraised. In other words, the case was not one arising under and construing an appraisal statute.

Judge Mayer held, in accordance with the great weight of authority, that neither an action at law nor in equity will lie for the recovery of the value of the stock of a constituent company which has consolidated with another pursuant to law. In his opinion the decisions in the cases of *Barnett v. Pennsylvania etc. Market Co.*, 218 Pa. 649, 67 Atl. 912, and *Winfrey v. Riverside Cotton Mills Co.*, 113 Va. 717; 75 S. E. 309 (the former of which cited the *Lauman* case, *post*, with approval) cannot be accepted as sound in principle if construed as contrary to the prevailing authority. Judge

Mayer was also of opinion that a minority holder of cumulative preferred stock upon which dividends were in arrears had no lien upon the assets of his company.

Judge Mayer said:

"It has been held in various jurisdictions that an action at law or in equity will not lie for the recovery of the value of the stock. *Mayfield v. Alton Gas Co.*, 198 Ill. 528, 65 N. E. 100; *Mansfield v. Brown*, 26 Ohio St. 223; *Bish v. Johnson*, 21 Ind. 299; Noyes on Inter-corporate Relations, pp. 90, 91. The *Mayfield Case*, *supra*, contains an admirable exposition of the particular question here discussed. Without analyzing what may be the difference between the principle as set forth in the cases just cited and that of the Pennsylvania decisions (*Barnett v. Phila.*, etc., *Market Co.*, 218 Pa. 649, 67 Atl. 912, and *Winfree v. Riverside Cotton Mills*, 113 Va. 717, 75 S. E. 309), the latter cannot be accepted as sound in principle, if construed as contrary to the *Mayfield Case* and to the observations well stated by former Judge Noyes in section 46 of his book on Inter-corporate Relations."

In the case cited by Appellants, of *Schauble v. Commonwealth Finance Corporation* (unreported), the referee was dealing with the common law rights of a stockholder in a South Dakota Corporation which had sold and transferred its assets to another corporation with the consent of three-fourths of the stockholders.

So far as we can discover, the South Dakota statute contained no provision for the appraisal of the stock of the dissenting stockholder. As a matter of common law, therefore, it was held that he was entitled to a pro rata share of the assets sold.

Defendant contended that plaintiff was entitled to the market value of his shares. So far as the opinion of the referee shows, there was no active market for the stock.

The question of the actual value of the pro rata share of the corporate assets was not in issue because the parties had stipulated that it should be deemed to be the pro rata book value.

In other words, the referee was not dealing with a statute for the appraisal of stock at its market value or on any other basis.

The case of *Winfree v. Riverside Cotton Mill*, 113 Va. 717; 75 S. E. 309, was in equity to enjoin a consolidation. The court held that the statutory remedy for appraisal was not exclusive and that a stockholder might apply for an injunction.

The case of *Lauman v. Lebanon Valley R. R. Co.*, 30 Pa. 42, 72 Am. Dec. 685, was decided in 1858, and the merger there was made under an act passed "last year". A reading of that opinion clearly indicates that the merger was not effected under a pre-existing statute which was a part of the stockholders' contract.

The case of *Barnett v. Philadelphia Market Co.*, 218 Pa. 649; 67 Atl. 912, did not construe the Pennsylvania statute. It held (relying largely on the Lauman case) that the statutory remedy was not exclusive and that the stockholder might have an equitable remedy. This case was in equity.

That the stock in question had no active market is indicated by the closing sentence of the opinion; namely,

"The value was ascertained in accordance with our own cases and the authorities gen-

erally directing how the value of stock of this kind, not listed and having no quoted price, shall be determined."

Both of these cases were qualifiedly disapproved by Judge Mayer in *In re Interborough Consolidated Corporation, supra*).

**No Vested Rights of Preferred Stockholders
Were Impaired by the Consolidation
in This Case.**

The case at bar is *sui generis* in that there was no surplus of General Leather Company in which the preferred stockholders could have vested rights. We submit that a careful reading of the authorities will disclose that in the case of the merger or consolidation of such a corporation under the statute the only grounds for equitable relief are fraud (admittedly not present here) and unfairness.

In the case of *Lonsdale Securities Corporation v. International Mercantile Marine Co.*, 5 A. R. 1617 (139 Atl. 50), the defendant company had accumulated a surplus and Vice-Chancellor Bentley accordingly said:

"It seems to me notwithstanding the disagreement of the learned counsel for the defendant, the situation is controlled, so far as the rights of the preferred stockholders in the surplus is concerned, by the decision in *Day v. U. S. Cast Iron Pipe & Foundry Co.*, 95 N. J. Eq. 389."

For the same reason the case of *Colgate v. United States Leather Co.*, 73 N. J. Eq. 72, is distinguishable. In that case there was a substantial surplus to which the so-called "charge" of the preferred stockholders was thought to attach irrevocably. The following language of Vice Chancellor Emery's opinion, page 96, makes it clear that the Vice Chancellor had clearly in mind

the necessity of the existence of "earnings applicable to dividends":

"And the unpaid dividends being expressly charged upon the earnings of the company, these earnings, or the property or assets of the company representing them, or in which they have been invested, will, in my judgment, be taken over by the consolidated company (which takes all the assets of the United States company), subject to the liability or duty to account for these earnings or the property in which they have been invested, thus taken over for the payment of the accrued dividends and to the extent to which the earnings applicable to dividends have been unpaid."

We submit, the reason that he felt that the rights of the preferred stockholders were violated was because of the peculiar language of the preferred stock clause making unpaid dividends "a charge upon the earnings of the company prior to the claim of the common stock," which caused him to treat the preferred stockholders substantially as if they had been creditors, to the extent that preferred dividends had been *earned*, but not to the extent they had *accrued*. (That language is absent from the charter of Central Leather Company.)

In *General Investment Co. v. American Hide & Leather Co.*, 98 N. J. Eq. 326, 331, Mr. Chief Justice Gummere limited his remarks with reference to the accrued, unpaid dividends to those "which now remain in the treasury of the company." In that case there was a surplus of \$5,000,000 and dividends in arrears in a much greater amount.

An analogous line of reasoning has been adopted in the cases in this state in the construction of charter clauses relating to dividends payable on non-cumulative preferred stock. *Bassett v. U. S. Cast Iron Pipe & Foundry Co.*, 75 N. J.

Eq. 539; *Moran v. U. S. Cast Iron Pipe & Foundry Company*, 95 N. J. Eq. 389, 391, Affirmed 96 N. J. Eq. 698; *Day v. U. S. Cast Iron Pipe & Foundry Co.*, 96 N. J. Eq. 736. The equities of preferred stockholders declared in those cases affected only, and were limited in extent to, *actual earnings*.

No Constitutional Question Is Involved

The determination of the question whether the vested rights of the stockholders were impaired by the Consolidation Agreement was not properly within the scope of the authority of the appraisers. The petitioning stockholders dissented from the consolidation and refused to convert their stock thereunder. Why, therefore, argue whether the proposed terms of the conversion were unfair or illegal. Their rights are not affected in any way by the consolidation, except that it was the occasion which enabled them to set in motion the procedure for disposing of their stock for cash at the market value.

It would have been peculiarly inappropriate had the appraisers undertaken to pass upon the legal validity of the Consolidation Agreement, as that was already in issue in the Court of Chancery.

Nor is any question involved as to the constitutional rights of the petitioning stockholders.

Central Leather Company was organized in 1905 and hence the appellants held their stock subject to the power to merge or consolidate.

But the legislature has seen fit to give to the stockholder the right to elect not to submit to the compulsory effect of a consolidation, and, to compel the corporation to purchase his stock for cash. This section also was in the statute (By Supplement of 1902, page 700) when the company

was formed. So that, even if the statutory provision were inadequate, or drawn in objectionable form, it was still a part of his stock contract.

These proceedings were instituted by the stockholders and not by the corporation. How can the result of the appraisal be called expropriation of the stockholders' rights? And it was not their only remedy. They might have taken the new securities under the Consolidation Agreement, or, if convinced that their legal rights were impaired thereby, have prayed for an injunction before the consolidation went into effect.

How can the appellants argue that the appraisal must be made on a basis other than that clearly stated in the statute because the statutory basis is unconstitutional? In other words, have they been deprived of their property without "due process" if the statute be construed and applied according to its plain sense, when the statute provides an alternative right to which they would not have otherwise been entitled, under which they have voluntarily proceeded, which was in the statute when the Company was formed?

The impairment of a contractual obligation cannot be argued because the statute was passed before and not after the obligation was created.

As an analogy, consider the status of employer and employee under the Workmen's Compensation Act. That creates mutual rights and obligations, the enforcement of which would undoubtedly be unconstitutional were it not for the election of the parties to be governed by the statute. How could an injured employee, pursuing his remedy under the statute, complain that it was unconstitutional because the amount of the com-

pensation awarded by the statute was less than the proper pecuniary measure of his injuries?

Sexton v. Newark District Telegraph Co.,
84 N. J. L. 85, 94; affirmed, 86 N. J. L. 701.

The same constitutional argument was made by the stockholders in the *Morris Canal & Banking Company* case (*supra*), but received slight attention in this court.

The appellants do argue that Section 108 may be construed to apply to public utility corporations organized before that section was passed, hence that the application of that section might deprive stockholders of such a corporation of constitutional rights if the market value of their stock were adopted as the measure of compensation to them; and that Section 108-a must be construed in the same manner as Section 108.

The adoption of market value of the stock as a measure of compensation is not unconstitutional.

Morris Canal and Banking Company case,
supra;

20 *Corpus Juris*, 728;

U. S. v. Chandler-Dunbar Water Power Co., 229 U. S. 53, 81; 57 L. ed. 1063, 1082;

Gregg v. Northern R. R. Co., Appendix;

The Minnesota Rate Cases, 230 U. S. 352, 451; 57 L. ed. 1511, 1562;

Butler Rubber Co. v. Newark, 61 N. J. L. 32.

Conclusion.

Appellants filed their petition praying for the appraisal of their stock at its full market value.

It is not contended by them that the figure at which the stock was appraised is other than market value of the stock in the ordinary sense of the phrase.

But they claim that full market value should be construed to mean par and accrued dividends on the stock because of the terms of the preferred stock clauses.

It cannot be successfully maintained that constitutional provisions require such construction of section 108-a. The proceedings were not instituted by the corporation by way of condemnation of their stock; and their resort to an appraisal was not in any sense compulsory, as this was not the only right or remedy open to them upon consolidation.

Even if the appraisal proceedings were in form or in effect compulsory upon them, it would not be unconstitutional to condemn their stock at its full market value.

The alleged right to par and accrued dividends does not arise out of the preferred stock clauses, because there was no dissolution of the corporation; and if there were a dissolution by force of the consolidation, the time is not ripe for the enforcement of that claim on the part of the preferred stockholders since they are entitled thereto, if at all, only when the properties of the company are liquidated and the proceeds are ready for distribution. Such claim is not an absolute claim arising upon dissolution or even upon sale of the properties but merely a claim to be paid in preference to any distribution to common stockholders.

If there were such a claim enforceable by the preferred stockholders at the moment of dissolution, it is one not properly enforceable in the appraisal proceedings. By no stretch of argument can par and accrued dividends be said to be the full market value of the stock. If plaintiffs are entitled thereto upon any legal theory, it must be by virtue of some contractual relationship or some duty to account, the existence and extent and enforceability of which can properly be adjudged, if at all, only in the court of chancery.

The judgment should be affirmed.

Respectfully submitted,

PITNEY, HARDIN & SKINNER,
Attorneys for Defendant.

WALDRON M. WARD.
Of Counsel.

February term, 1929.

APPENDIX.

PRINCIPLES OF ECONOMICS BY F. W. TAUSSIG
(HENRY LEE PROFESSOR OF ECONOMICS
IN HARVARD UNIVERSITY.)

(PUBLISHED BY THE MACMILLAN CO., N. Y. 1913.)
pp. 113, etc.

“The value of a commodity means in economics its power of commanding other commodities in exchange. * * * It is immaterial that the exchange does not take place directly, but by the process of first disposing * * * for the medium of exchange,—money, * * *

“The value of a commodity, thus conceived, is its value in exchange.”

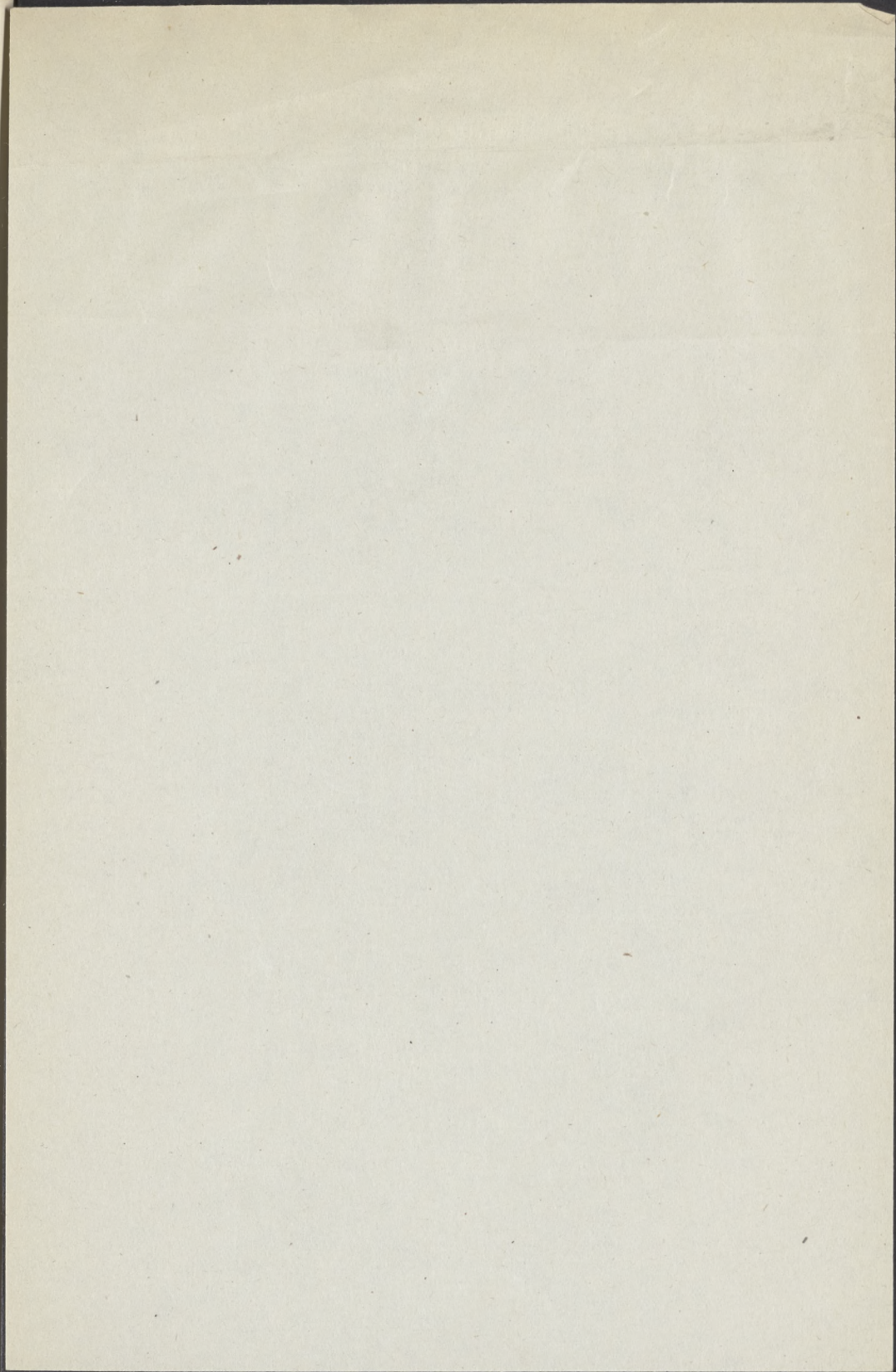
PRINCIPLES OF ECONOMICS BY EDWIN R. A. SELIGMAN, LL.D. (McVICKAR PROFESSOR OF POLITICAL ECONOMICS, COLUMBIA UNIVERSITY.)

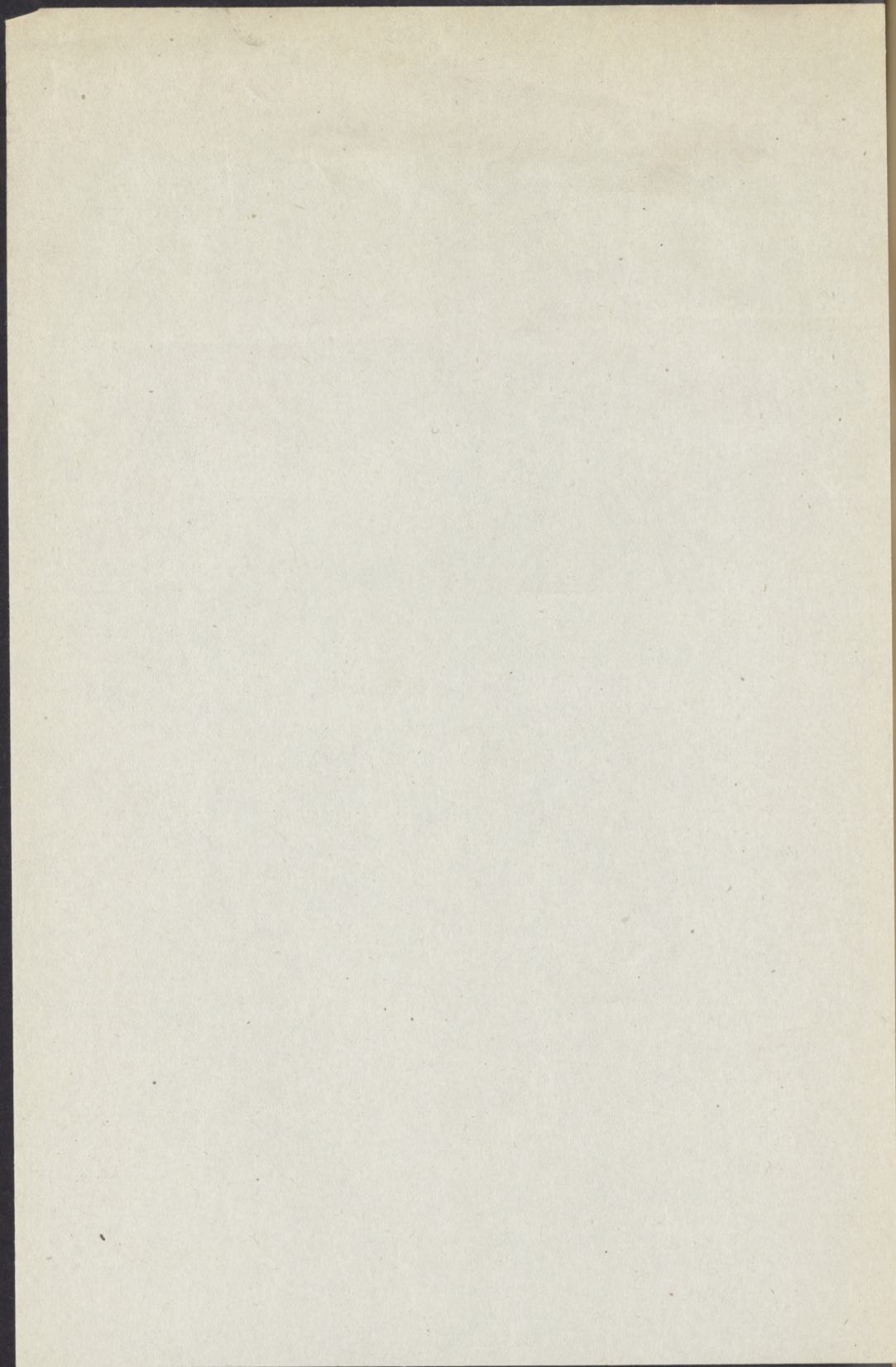
(PUBLISHED BY LONGMANS GREEN & Co., 1916.)
pp. 182, etc.

“Since value is a social conception depending on a comparison of divers goods, and since the comparison is ordinarily made in society by their transfer from man to man, it is clear that the value with which economics has to deal is exchange value, or value in exchange. * * *

“Strictly speaking, the value of a thing exists only at the moment when it is exchanged for or compared to something else, * * *. Thus value comes to mean exchange power, or the estimate of exchange power. * * *

“In civilized society we have become accustomed to measure all values in terms of a





single commodity called money; so that by price we now mean the money value of anything,—the amount of money for which it will exchange.”

EXTRACT FROM

“VALUATION OF INDUSTRIAL SECURITIES”

By Ralph Eastman Badger, Ph.D., Associate Professor of Economics, Brown University (Prentice-Hall, Inc., N. Y. 1925).

(This study is thoroughly documented. It is referred to by Professor Dewing, Associate Professor of Finance, Harvard University, author of the authoritative “Financial Policy of Corporations,” as “the most searching study of valuation, as a practical business problem, thus far prepared.”)

Extract from Chapter XIII.

BOOK VALUE VERSUS MARKET VALUE OF COMMON STOCKS.

(p. 137) “The valuation methods so far recommended have ignored the book value of assets as a basis of appraisal. In fact, even in those cases where liquidated values were suggested as a proper starting point for the appraisal process, no reference was made to the book value of assets, nor were they in any way advocated as a proper guide to security values. In other words, the position maintained throughout this work is that the book value of assets is utterly worthless to serve in any way as a basis for security valuation. And this applies regardless of the type of security considered.”

COURT DECISIONS.

Douglas v. Merceles, 25 N. J. Eq. 144 (Chancellor RUNYON, 1874):

“By an order made in this cause on the 31st of March, 1873, it was referred to a master to ascertain what the market value was per share, of the stock of the Riverside Land Improvement Company, on the 1st day of November, 1867, * * * The master having reported, exception was filed to so much of his report as relates to the market value of the stock. He reports that that value was, on the 1st of November, 1867, \$211.30 per share, and gives as his reasons for this conclusion, that the evidence shows that, on the day last mentioned, the stock was not in the market; that the company then owned three thousand one hundred and eighty lots of land; that each share of stock represented two and sixty-seven one hundred and twenty-fifth lots; that each acre of land then owned by the company, contained twelve lots, and was worth \$1000, at an average valuation, and that each lot was therefore worth \$83.33.

“Finding that the stock was not in the market on the day as of which the market value was to be fixed, he has found and reported what he considers to have been its intrinsic value. The market value and the intrinsic value are by no means, necessarily the same; the terms are not convertible. The intrinsic value of a stock is not only not an infallible guide to its price in the market, but is, in fact, no guide at all. A stock intrinsically worthless may bring a good price, while, on the other hand, one of great intrinsic value may be greatly depreciated. If, under such a reference as that under consideration,

the master should find no guide to which he could reasonably commit his conclusions—if he should find no market price within a reasonable period, either before or after the day to which his inquiries are to be directed, the intrinsic value may then enter into his estimate. But the order in this case called for his report as to the market value, a term deliberately employed as being exactly expressive of the meaning of the court. And if a marketable value could be established, the master was bound to find and report it. * * *

“The market price of a commodity is the actual price at which it is commonly sold. That price may be fixed by sales in market at or about the time. If no sales can be shown on the precise day, recourse may be had to sales before or after the day, and for that inquiry a reasonable range in point of time is allowable. *Dana v. Fiedler*, 12 N. Y. 40; *Beach v. Raritan and Del. Bay R. R. Co.*, 37 N. Y. 457. There had been no sales before this date. There were none at that time; but there were some after it. It appears that, from the 1st of November, 1867, until December, 1870, the value of the stock in the market did not materially fluctuate. There is, therefore, no injustice to the complainant in taking the market prices between those dates as a criterion. * * * On the 18th of February, 1868, the first sale of the stock appears to have been made. Then, twenty shares were sold at \$100 per share, and though there were two sales of forty shares each, on the 1st of November, 1868, and one on the 10th of that month, of thirty shares, and another on the same day of twenty

shares, and a sale of twenty shares on the 10th of September, 1869, yet at none of these sales, nor at all up to December 28th, 1870, did the stock bring more than \$100 per share; and on the last named day, forty or fifty shares were sold at \$140. The sale made in February, 1868, followed, as it was, by other sales made in that year and in the two years and ten months following, none of which were at a greater price, may properly be regarded as fixing the marketable value of the stock as not exceeding \$100 per share on the 1st of November, 1867. These sales were in the aggregate of one hundred and seventy shares. The quantities sold at the various sales were moderate, and the sales took place in Paterson, where the company and its property were located and its operations conducted. I leave out of view the opinion expressed by Mr. Hobart, the person who purchased the stock sold in February, 1868, that the stock, on the 1st of November, 1867, would not have brought more than \$75 a share, because it is merely an opinion. The question to be determined is, what could the complainant, if he had owned the stock and had been willing to sell it, have got for it in the market, on the last named day, from a person willing to buy? Or, what price would he have been compelled to pay for it then? * * * Besides, it does not seem to be material, in ascertaining the market price of the stock, to enquire why the stock appeared in the market. It was not thrown on the market in large quantities. The sellers, it is to be presumed, obtained the best price they could for it. That the stock did not command a better price in the market than \$100 a share at the time when these sales were made, is not denied.

“The master should, under the evidence, have found that that sum was the market value of the stock on the 1st of November, 1867. The exceptions, therefore, are sustained.”

Budd v. Van Orden, 33 N. J. Eq. 143; Affirmed 33 N. J. Eq. 564.

In this case a question arose as to the value of certain real estate, as to which the lower court said:—

“The only absolute test we can have of the value of a merchantable article is what it has been sold for at a fair sale. All other means of ascertaining the value of a merchantable commodity are speculative, and must, to a greater or less extent, be uncertain. A sale is a demonstration of the fact, while estimates, even by the best judges, are simply matters of opinion, which, at best, are only approaches to the fact.”

Borg v. International Silver Co., 11 Fed. (2nd) 147 (Cir. Ct. App. 2nd Cir.)

In this case there was involved the question as to whether the defendant company was selling certain treasury stock for less than its value. Judge Hand said:—

“The suggestion that the book value of the shares is any measure of their actual value is clearly fallacious. It presupposes, first, that book values can be realized on liquidation, which is practically never the case; and, second, that liquidation values are a measure of present values. Every one knows that the value of shares in a commercial or manufacturing company depends chiefly on what they will earn, on which balance sheets throw little

light. When all is said, value is nothing more than what people will pay for the shares, given as wide an opportunity for bidders to come in as is reasonably possible."

Gregg v. Northern R. R. Co., 67 N. H. 452; 41 Atl. 271.

In this case, the court stated the question of fact to be the market value of stock of the Railroad Company held by the plaintiff. The case came up on appeal from an award granted to the plaintiff in an eminent domain proceeding undertaken by the Railroad so as to obviate the plaintiff's objection to a lease of the Railroad to the Boston and Maine. In addition to evidence of the market price in actual sales of the stock, the plaintiff introduced evidence of an offer to lease the road at better terms than the Boston & Maine offer, which had been introduced as tending to show that the true market *value* of the shares was higher than the market *price*. Other evidence was offered for the same purpose. The court set aside the award on the ground that such evidence was inadmissible in view of the fact that evidence of the actual market value was available and constituted the most trustworthy indication of market value. The court said—

* * * "In general, the price paid at such sales and at the brokers' board in Boston for Northern Railroad stock and various other New Hampshire stocks, there sold often enough to attract the attention of investors competent to investigate the question of value, may well be taken as the market value. The market value of property that has no regular market price because not often sold in a public market of that kind, may require evidence of all the elements that would be

considered by competent bidders in such a market. In this case evidence of those elements was added to evidence of a regular market price in a manner and to an extent we cannot suppose would have been allowed if an erroneous view of the law had not been taken."

U. S. v. Reading Company, 295 Fed. 551 (Eastern District of Pennsylvania, 1923.)

Heard by Circuit Judges BUFFINGTON and DAVIS and District Judge THOMPSON.

The railroad company had been ordered to sell the stock of the coal company and had made a sale. Intervening stockholders in the railroad company petitioned for an order setting aside the sale on the grounds, among others, that the sale was not a compliance in good faith with the decree of the court and that the price was so inadequate as to indicate fraud. The Court said:

"There are two kinds of value, intrinsic and market. The price realized was not the highest intrinsic value placed upon it by Mr. Richards. But there is often a wide difference between intrinsic value and market value. So great is this difference that intrinsic value is not admissible in evidence as indicating what a commodity should sell for at a specified time under particular circumstances, if bona fide market value can be established. 'The intrinsic value of a stock is not only an infallible guide to its price in the market, but is, in fact, no guide at all.' *Douglas v. Merceles*, 25 N. J. Eq. 144; *Trust & Savings Co. v. Home Lumber Co.*, 118 Mo. 447, 24 S. W. 129; *Henry v. North American Railway Construction Co.*, 158 Fed. 79, 85 C. C. A. 409."

In re Jones' Estate, 155 N. E. 395 (Court of Appeals of Ohio, 1925).

This case arose under the Inheritance Tax Law providing for a tax fixed in accordance with the "actual market value." The case involved the valuation of stock in a close corporation. The Court said

"* * * During all the period of the ownership by Jones of this stock none of the stock of said Company had been sold. It follows that the real foundation upon which to base the value of the stock in question is absent"
* * * "It is urged by learned counsel for defendant-in-error (the State Tax Commission) that the book value of the stock should be taken and considered as its actual market value.

"To this claim we can not agree. If this were fixed as a rule to determine actual market value of stocks, it certainly would open the door to fraud and result in either excessive or low values in many instances" * * *

Cate v. Fisk, 175 App. Div. 235, 161 N. Y. Supp. 441 (1916).

The value of stock of the American Locomotive Co. was one of the chief questions in the case. This opinion was rendered upon appeal from an order relative to the venue. The Court said:

"The principal effort in this suit will be to discover the value of the stock of the American Locomotive Company just before and on the day of the transactions in question. That was fixed by the market; and the great market for the purchase and sale of securities, as everybody knows, was then and is now the New York Stock Exchange. A small, obscure concern, whose stock is not

listed by the Stock Exchange, and which has never been bought and sold on the market, might establish the value of its stock by proof of the value of the plant; but proof of the physical value of one out of the several plants of this great establishment would assist not at all in determining the market value of its stock. One other witness is offered to prove the assessed value of the plant. His evidence, of course, will be valueless for the reasons just stated. The remaining witness presented by the plaintiff is offered to testify to the prices at which the stock of the company sold prior to and at the time of the transactions in question. Of course his testimony will be relevant, and his convenience must be considered."

Newark v. Tunis, 81 N. J. L. 45 (1911); affirmed 82 N. J. L. 461.

By Justice SWAYZE for the Supreme Court:

"The question presented by this case is in what manner the true value of the shares of stock of a national bank is to be determined. The city insists that the basis for the ascertainment of the amount is the exchange value in the market * * *. The defendant insists that the basis is the book or liquidation value—the amount which would be payable to each share if the assets of the bank were at once distributed. In this view the defendant was sustained by the board of equalization, whose action is now before us for review.

"If we look merely at the language of the act itself, the city's contention seems the proper one. Personal property and real estate are both to be assessed at true value, and

a statutory definition is attempted of the expression as used with reference to real estate. It is the price at which the property would sell at a fair and *bona fide* sale by private contract. Unless we are to assume that a different meaning is to be attributed to the words when used in the twelfth section from that expressly given to them in the sixth, true value of personal property must mean market value under ordinary and normal conditions. * * *

“We think, therefore, that upon a proper construction of the Tax act, the true value at which shares of stock in a national bank are required to be assessed is, under ordinary and normal conditions, their exchange value in the market, and not their book or liquidation value; from the total valuation of all the shares there must be made such deductions as the statute permits.”

To same effect, as to valuation of bank stock under a similar statute, see *Schley v. Montgomery County Commissioners*, 106 Md. 407, 67 Atl. 250. (1907).

Walter v. Duffy, 287 Fed. 41 (Circuit Court of Appeals, Third Circuit, 1923).

This was a Federal Income Tax case, and the question at issue was the fair market price or value as of March 1, 1913 of stock of The Prudential Insurance Company of America.

In commenting upon the charge of the trial court, the Circuit Court of Appeals says:

“At this point we deem it proper to say that, as an abstract statement of the law, the court was right, for undoubtedly the law, as well as the provisions of the governing stat-

ute heretofore quoted, is that evidence of intrinsic value is not resorted to when fair market value is evidenced by sales." * * *

"We start, then, with the fact that we are here dealing with the existence of a market, and a market price evidenced by sales in such market; so that our first and basic inquiry is whether there actually was a market for the sale of this insurance stock. * * * Standing alone, offers to sell, with no takers, or offers to buy, with no sellers, show no such concurring willing action of buyer and seller as is involved where a market is made by buyers and sellers who by their respective sales and purchases make a market price which the law takes as evidence of value."

Commonwealth v. Cary Improvement Company,
98 Mass. 19 (1867).

The case involved a tax on the market value of the capital stock of the corporation. The Court said:

"But, if this were otherwise, we are all of opinion that the standard adopted by the commissioners was the correct one. The computation or estimate to be made by them is in no legal sense a valuation of the property of the corporation. The returns required from the corporation furnish no means for such a valuation; and the statute neither requires nor contemplates it. The corporation is to return 'the cash market value of the shares'; and the commissioners are to 'ascertain' the 'market value of all the capital stock' of the corporation. * * * But whether they ascertain the value from the returns, or obtain it 'otherwise,' the valuation that is to be ascertained is nothing else than the

market value of all the shares of the capital stock of the corporation. This court held, in the case of *Chicopee v. Hampden*, 16 Gray, , that the market value of all the shares of the capital stock was not the proper measure of the value of the property of a corporation; and the converse must be equally true, namely, that the property held by a corporation does not furnish a proper measure of the value of its capital stock regarded as a franchise. The market value of corporate stock must be determined like the market value of any other commodity, by the price that it commands upon actual sales."

See also, to same effect,

National Bank of Commerce v. City of New Bedford, 155 Mass. 313, 29 N. E. 532 (1892);

National Bank of Commerce v. City of New Bedford, 175 Mass. 257, 56 N. E. 288 (1900).

(The opinions in both of the last two cited cases were by Justice Holmes.)

Bingham's Administrator v. Commonwealth, 244 S. W. 781 (Ky. 1922).

This was an inheritance tax case involving large blocks of stock having a large value.

There was some discussion of the phrase "fair cash value."

In commenting unfavorably upon cases relied upon by the estate, * * * the court said,

"Each, in addition to the vices already pointed out, would substitute for a certain known value, established in an open market under ordinary conditions, an uncertain and unknown value, to be determined by specula-

tion among experts as to what it would have been on a given date if something which did not occur had happened then or within a reasonable time thereafter."

Extracts From Decisions of the Federal Tax Authorities.

A. R. R. 4837; III—4—1322; Cumulative Bulletin III—1, page 39. The appeal involved the computation of a profit on the sale of stock.

Held, by the Committee on Appeals and Review

"that the Unit's action in using actual sales of the different stocks in a free and open market and in substantial amounts as reflecting the fair market value as at March 1, 1913 instead of using a value based on the fair market value of the assets of the different corporations, is correct and should be sustained."

A. R. R. 33; 9-20-764; Cumulative Bulletin No. 2, page 30. The appeal involved profit on sale of stock. Taxpayer contended that the book value of the stock on March 1, 1913 was very much in excess of the market quotations and should be utilized as a basis for determining the profit. The Committee on Appeals and Review held otherwise, saying,

"The question here at issue is not the value of the capital assets of the M Company but the value of the shares held by A. The Committee is clearly of the opinion that, given a free and broad market, shares of stock in a corporation were worth what they would bring, and that the best evidence of what they would bring is the price they actually did bring when offered for sale and sold upon the Stock Exchange."

See also:

S. M. 1609; III-13-1447; Cumulative Bulletin III—1, p. 48.

Brown's Appeal, 1 B. T. A. 502; Corporation Trust Company Income Tax Service Part I, Vol. 2, Board of Tax Appeals, p. 53.

